PROCEEDINGS

OF THE

American

Political Science Association,

AT ITS

THIRD ANNUAL MEETING

HELD AT

PROVIDENCE, R. I., DECEMBER 26 to 29, 1906.

WICKERSHAM PRESS,
LANCASTER, PA.
1907.

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CONSTITUTION

OF

The American Political Science Association

ARTICLE I.

NAME.

This Association shall be known as the American Political Science Association.

ARTICLE II.

OBJECT.

The encouragement of the scientific study of Politics, Public Law, Administration, and Diplomacy.

The Association as such will not assume a partisan position upon any question of practical politics, nor commit its members to any position thereupon.

ARTICLE III.

MEMBERSHIP.

Any person may become a member of this Association upon payment of Three Dollars, and after the first year may continue such by paying an annual fee of Three Dollars. By a single payment of Fifty Dollars any person may become a life member, exempt from annual dues.

Each member will be entitled to a copy of all the publications of the Association issued during his or her membership.

ARTICLE IV.

OFFICERS.

The officers of this Association shall consist of a President, three Vice-Presidents, a Secretary, and a Treasurer, who shall be elected annually, and of an Executive Council consisting *ex-officio* of the officers above mentioned and ten elected members, whose term of office shall be two years, except that of those selected at the first election, five shall serve for but one year.

All officers shall be nominated by a Nomination Committee composed of five members appointed by the Executive Council, except that the officers for the first year shall be nominated by a committee of three to be appointed by the chairman of the meeting at which this Constitution is adopted.

All officers shall be elected by a majority vote of the members of the Association present at the meeting at which the elections are had.

ARTICLE V.

DUTIES OF OFFICERS.

The President of this Association shall preside at all meetings of the Association and of the Executive Council, and shall perform such other duties as the Executive Council may assign to him. In his absence his duties shall devolve successively upon the Vice-Presidents in the order of their election, upon the Secretary and the Treasurer.

The Secretary shall keep the records of the Association and perform such other duties as the Executive Council may assign to him.

The Treasurer shall receive and have the custody of the funds of the Association, subject to the rules of the Executive Council.

The Executive Council shall have charge of the general interests of the Association, shall call regular and special meetings of the Association, appropriate money, appoint committees and their chairmen, with appropriate powers, and in general possess the governing power in the Association, except as otherwise specifically provided in this Constitution. The Executive Council shall have the power to fill vacancies in its membership occasioned by death, resignation or failure to elect, such appointees to hold office until the next annual election of officers.

Five members shall constitute a quorum of the Executive Council, and a majority vote of those in attendance shall control its decisions.

Ten members shall constitute a quorum of the Association and a majority vote of those members in attendance shall control its decisions.

ARTICLE VI.

RESOLUTIONS.

All resolutions to which an objection shall be made shall be referred to the Executive Council for its approval before submission to the vote of the Association.

ARTICLE VII.

AMENDMENTS.

Amendments to this Constitution shall be proposed by the Executive Council and adopted by a majority vote of the members present at any regular or special meeting of the Association.

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OF

The American Political Science Association

FOR THE YEAR 1906

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OF

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FOR THE YEAR 1907

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Young, James T., University of Pennsylvania, Philadelphia, Pa.

Report of the Treasurer for the Year 1906

Receipts.

Fees, life membership (6)	$300.00
Annual dues	807.00
Proceedings sold	38.00
Subscriptions to "Review"	14.25
Interest on bank deposit	29.16
Contributions to fund for "Review"	870.00
Total receipts to December 29, 1906	$2,058.41
Balance on hand December 30, 1905	973.52
Total	$3,031.93

Expenditures.

Clerical assistance	$158.15
Printing and mailing Proceedings for 1905	370.44
Printing "Review," Vol. I, No. 1	467.96
Miscellaneous printing and stationery	131.80
Purchase of books for "Review"	8.33
Railway expenses for Council meetings	124.14
Stenographer	6.00
Stamps, expressage, and miscellaneous expenses of Secretary	97.00
	$1,363.82
Balance on hand December 29, 1906	1,668.11
	$3,031.93

Submitted December 29, 1906.

W. W. Willoughby.

Audited and found correct.

John A. Fairlie,

Benj. F. Shambaugh.

REPORT OF THE PROCEEDINGS

OF THE

THIRD ANNUAL MEETING

OF THE

American Political Science Association.

BY THE SECRETARY.

The Third Annual Meeting of the Association was held in Providence, Rhode Island, December 27 to 29, 1906, under the auspices of Brown University. The meeting was in every way a most successful one. The papers read were interesting and valuable, the number of members registering their attendance considerably larger than upon any previous occasion, and the various hospitalities extended of the most delightful character. The University Club opened its doors to its many comforts, and the Brown Union furnished an ideal place for social rendezvous. Wednesday evening the Committee of Management of the John Carter Brown Library tendered a reception at the Brown Union to the members of all the Associations holding sessions at the time in Providence. These other scientific bodies were the American Historical Association, the American Economic Association, the American Sociological Society, the New England History Teachers' Association, and the Bibliographical Society of America. On Thursday, a luncheon was given to the members of the Associations at the Lyman Gymnasium, by the Corporation of Brown University, and from five to seven upon the same afternoon, Mrs. William B. Weeden received the members at her beautiful home. Another luncheon was tendered the Political Science

Association by the Trustees of the Providence Public Library and the Trustees of the Providence Athenaeum on Friday at the Lyman Gymnasium; and in the evening of the same day a large smoker to all the associations was held at the Trocadero.

At the business meeting of the Association the following officers were elected for the year 1907. Hon. Frederick N. Judson, of St. Louis, President; Professor Albert Bushnell Hart, First Vice-President; Professor H. A. Garfield, Second Vice-President; Professor Paul S. Reinsch, Third Vice-President. In the places of Professors L. S. Rowe, P. S. Reinsch, G. G. Wilson, W. A. Schaper, and J. A. Woodbury, whose terms of office expired, the following members of the Executive Council were elected: Professor A. L. Lowell, of Harvard University, Professor James T. Young of the University of Pennsylvania, Professor Stephen Leacock of McGill University, Professor Theodore Woolsey of Yale University, and Dr. Albert Shaw, retiring President of the Association. Upon the invitation of the University of Wisconsin and other institutions of Madison, Wisconsin, that city was selected as the place of meeting of the Association in December, 1907.

MEETINGS OF THE EXECUTIVE COUNCIL.

During the year several important meetings of the Executive Council were held.

At a meeting held in the City Club, New York City, November 30, 1906, the following members were present: Albert Shaw, Albert Bushnell Hart, H. A. Garfield, J. A. Fairlie, F. J. Goodnow, B. F. Shambaugh, G. G. Wilson, and W. W. Willoughby. Besides routine business, the principal subject discussed was the suggestion offered by Professor Goodnow that there should be undertaken under the auspices of the Association an examination of the problem of the administration of criminal justice with special reference to American conditions. Upon motion Professors Goodnow, Hart and Willoughby were appointed by the Chair a committee to prepare and submit to the next meeting of the Council a report containing suggestions as to the scope and method of conducting this investigation.

At the meeting of the Council held, December 26, at Providence the following members were present: J. A. Fairlie, F. J. Goodnow, A. B. Hart, P. S. Reinsch, W. W. Willoughby, and G. G. Wilson. A Committee composed of Professors Fairlie and Shambaugh was appointed to audit the accounts of the Treasurer. Professors Goodnow, Dealey, Haynes, Merriam and Shambaugh were appointed a committee to nominate officers of the Association for the year 1907. Professors Garfield, Reinsch, and Willoughby were appointed a committee to supervise the printing of the Proceedings of the third annual meeting. A standing committee composed of Professors Willoughby and Hart, and Dr. Shaw was appointed with power to select members for such Boards and Commissions as the Council might create. Professors Reinsch, Hart and Willoughby were appointed a committee to arrange the program for the annual meeting of the Association in 1907.

Professors Goodnow, Hart and Willoughby submitted the following report upon the proposed investigation of Police Administration which was unanimously adopted:

The Political Science Association, which is now preparing for its third annual meeting, has already proved that there was a vacant field for it to occupy, and each of the three activities already developed has aroused interest and concentrated effort: (1) the annual meetings have been well attended and profitable; (2) the annual report has contained material important alike to the student and to the public; (3) the new journal promises to take its place among the special publications of the country. These three enterprises are not all that the Association can safely carry. With our considerable membership, and keeping in view the widespread interest in problems of government, we think it the obligation of the Association from time to time to initiate new lines of research through special committees or commissions appointed for that purpose. The success of kindred societies, such as the American Historical Association and the American Economic Association, in those directions is an encouragement and an incentive to their younger sister.

From the other side, there are many pressing problems in

American government which cannot be solved without bringing together a large body of evidence: if there were no Political Science Associations, some of these problems must speedily be faced and an effort made to supply a rational basis for their discussion. The conjunction of work to do and of an organization suited to confront it seems to throw upon the Association a new duty.

Many of the American problems most in men's minds come home to only a portion of the American people: the labor question for instance, which is so absorbing in large cities and in the industrial regions, very little disturbs the rural population; the trust problem, though it affects the consumers all over the country, is especially lively in the centers of manufacture and distribution; the question of a subsidy applies chiefly to the seaboard ports and centers of ship-building. Furthermore, for all these questions there are special societies, like the American Economic Association, which have the machinery and the will to investigate them. The work of the Political Science Association must lie more in the direction of governmental problems—problems which have a widespread national significance. Among such questions, one which more and more insistently demands attention is how to deal with the spirit of lawlessness which is beginning to characterize us as a people. This disregard of law is sometimes due to statutes which are too far ahead of the ethical demands of the day to make it likely that they will be enforced by officials chosen, as is commonly the case in the United States, by popular vote. Sometimes it is due to the feeling that the people make the laws, and when a considerable majority dislike them they may be disobeyed without moral responsibility; but the great part of the lawlessness which we all deplore comes from an indifference to violation of statutes upon the expediency of which there is no disagreement. Courts and juries are often affected by this indifference to law, with the result that criminals are treated with leniency or escape altogether. It is notorious that human life and property are becoming unsafe in some sections of our country, and unless checked by more rigorous methods of legal enforcement this spirit will result in making America a byword among civilized nations for disorder and barbarism. It has already resulted in the resort to extra-legal methods for the enforcement of particular portions of the law which are persistently broken. The resort to such methods naturally does not tend to effect a

permanent cure of the evil conditions which exist, but in the opinion of many of our thinking men is itself producing conditions which are worse than those it is sought to cure.

Positive infractions of law, if recorded, can be studied, and inferences may be drawn from the results; but unpunished violations, and still more the failure to comply with the conditions of law — for instance, to report cases of contagious diseases or to inspect the condition of mine-workers—are outside of statistical inquiry and very difficult to reach by any methods. We do not see how this Association could bring to bear a body of facts which might affect public opinion on that side of the subject. At the other extremity of the question, however, stands the official machinery for dealing with lawbreakers, which in the last resort includes the courts; but a preliminary to the action of the prosecutor and judge is the action of the police. Undoubtedly one of the main causes of American lawlessness is the inadequate police protection generally accorded to the law-abiding people of the United States, and your committee have carefully considered whether the Association might not initiate an inquiry into the character and efficiency, or lack of efficiency, of this important part of our government. Such an inquiry would be especially timely in view of the fact that other civilized countries have a system which is more effective for the detection, the apprehension and the speedy trial of offenders than we are familiar with in the United States. Our first difficulty is that in the rural districts, which include nearly two-thirds of the population and more than ninety-nine one-hundredths of the area, there is practically no police system worthy of the name. Our existing method of detection of crime and apprehension of criminals, which has been inherited from England, and which places its main reliance on the county sheriff and the town constable, has shown itself to be of no real value in the conditions which now exist. It has been discarded in the land which gave it birth. It should be subjected to serious modifications in the land which adopted it, and which with few exceptions has permitted it to continue unmodified.

In the second place, although all the cities large and small have a police force, it is in most cities imperfect, and in some cities is believed to be actually in league with crime. It is true that during the nineteenth century important modifications were introduced into our municipal police system in the way of organization and discipline. So far as the frame of the present system is

concerned it leaves little to be desired; that is, we have a professional trained police which, with greater or less regularity, patrols the streets of cities by day as well as by night. But the operations of that force and the conduct of its members leave much to be desired. Charges of bribery, blackmail and corruption are persistently circulated with regard to the police of almost every city of the United States; while, in the opinion of many, crimes which are reprobated by communities of the lowest moral sense compatible with what is believed to be civilization, are on the increase. The police problem is acute in almost every city, and appears to be no nearer solution, notwithstanding the many remedies to which resort has been had.

The trouble with the police, however, does not stand alone: it is allied with and supplemented by a very defective system of criminal justice, which through its effort to protect private rights and save the innocent from punishment has developed an elaborate and technical procedure with many opportunities for carrying the issue from one court to another; suspicion is often cast upon the probity of jurors, if not of judges, and the long delays accompanying many criminal trials bring the whole system into disrepute.

Although closely connected, the two subjects discussed above are separable: the first part is the legal system for the prevention of crime, and the detection and apprehension of criminals; the second, the system adopted for the prosecution and conviction of those charged with crime. Upon the first of these subjects much light can be thrown by the experience of European countries, which contrive to keep order in rural communities, in which understandings between the criminal and the guardian of the public are uncommon, and in which the *esprit de corps* of the police force is higher than in America. The system of criminal justice, on the other hand, is based upon constitutional provisions, protecting private rights, and is difficult to alter without sweeping constitutional changes, in which the experience of foreign countries would probably give little aid. Of the two subjects, the first is the simpler, the more concrete and the more pressing. We believe that a society acting without the suspicion of political or other bias is especially fitted to undertake such a piece of research.

We therefore make to the Council of the Political Science Association the following recommendations:

1. That it inaugurate, through the Association, an investigation of the American system of police protection and the administration of criminal justice.

2. That the investigation be devoted primarily to the methods of detecting crime and apprehending criminals, including the organization of the police; together with the system of keeping order in the last resort by the militia or by United States troops.

3. That for this purpose the Council create a Commission on American Police Administration, to be composed of ten members, all of whom need not necessarily be members of the Association.

4. That the Council, in conjunction with the Commission, devise means for raising the necessary funds to carry on a searching investigation in all the states of the Union and in all the cities, upon the subject for which the Commission is created.

5. That the Commission shall make annual reports to the Association of the progress of its work until completed.

6. That a final elaborate report shall be submitted, which shall include a body of recommendations for legislation likely to remedy the evils of the present system.

All of which is respectfully submitted,

F. J. Goodnow,
A. B. Hart,
W. W. Willoughby.

At a meeting of the Council held December 28 in Providence, the following members were present: Albert Shaw, J. A. Fairlie, H. A. Garfield, F. J. Goodnow, A. B. Hart, P. S. Reinsch, B. F. Shambaugh, W. W. Willoughby, G. G. Wilson, and, by invitation, the newly elected President of the Association, Mr. F. N. Judson, and the new members of the Council, Professors A. L. Lowell and Stephen Leacock.

Professor W. B. Munro, Mr. G. W. Scott, and Mr. Robert Whitten were appointed a committee to coöperate with similar committees of other associations with reference to the project of preparing an international catalogue of the current literature of the social sciences.

The standing committee on appointments to Boards and Commissions was instructed to consider any suggestions that might be made with reference to a better organization of par-

ticular sections of the Association, and to authorize such action as might be deemed desirable.

The general question of instruction in Government in the secondary schools was discussed, and Professors Schaper, Reinsch, and Loeb were appointed a committee to make a preliminary investigation of existing conditions, and to report recommendations as to the action to be taken or investigation to be made, at the meeting of the Council in Madison, in December, 1907. Twenty-five dollars was appropriated for postage to be used by this committee.

It was decided that a regular meeting of the Council should be held each year in New York City upon the Saturday following Thanksgiving Day.

PROGRAMME OF THE THIRD ANNUAL MEETING

HELD IN

PROVIDENCE, R. I., DECEMBER 27-29, 1906

First Session.

Thursday, December 27, 10:00 A. M.,
Manning Hall.

International Law.

A Revision of the Geneva Convention—Rear Admiral Charles S. Sperry, U. S. N., Newport, Rhode Island.

The Recent Controversy as to the British Jurisdiction over Foreign Fishermen more than Three Miles from Shore—Professor Charles Noble Gregory, State University of Iowa.

The Third Pan-American Conference—Professor Paul S. Reinsch, University of Wisconsin.

Second Session.

Thursday, December 27, 3:00 P. M.,
Manning Hall.

Constitutional Law and Administration.

The Newport Charter—Rear Admiral F. E. Chadwick, U. S. N., Newport, Rhode Island.

The United States Constitution as Modified in the Civil War—Mr. W. B. Weeden, Providence, Rhode Island.

Recent Constitution-Making in the United States—Professor J. Q. Dealey, Brown University.

Third Session.

Thursday, December 27, 8:00 P. M.,
Sayles Hall.

Joint Meeting with the American Sociological Society.

Address of Welcome—President W. H. P. Faunce, of Brown University.

Presidential Address—Dr. Albert Shaw, President of the American Political Science Association.

Presidential Address—Professor Lester F. Ward, President of the American Sociological Society.

Fourth Session.

Friday, December 28, 10:00 a. m.,
Sayles Hall.

Joint Meeting with the American Economic Association.

THE ORGANIZATION AND GOVERNMENT CONTROL OF INSURANCE COMPANIES.

The Government Control of Insurance Companies—Professor Maurice H. Robinson, University of Illinois.

Some Observations Concerning the Principles which should Govern the Organization and Regulation of Life Insurance Companies—Mr. William C. Johnson, New York Manager of The Phœnix Life Insurance Company, of Hartford, Conn.

Discussion by Professor W. G. Langworthy Taylor, University of Nebraska; Dr. F. A. Cleveland, of New York City; Mr. F. L. Hoffman, Statistician of the Prudential Life Insurance Company; and Professor L. A. Anderson, of the Wisconsin State Board of Assessments.

Fifth Session.

Friday, December 28, 3:00 p. m.,
Manning Hall.

Political Theories.

Hobbes' Doctrine of the State of Nature—Professor C. E. Merriam, University of Chicago.

The Radical in Politics—Mr. J. E. Shea, Boston, Massachusetts.

Some Observations on Existing Methods of Amending State Constitutions—Professor J. W. Garner, University of Illinois.

Sixth Session.

Friday, December 28, 8:00 p. m.,
Manning Hall.

Business Meeting of the Association.

Report of the Treasurer.

Report of the Secretary.

Report of the Board of Editors of the American Political Science Review.

10 p. m. Smoker at the Trocadero, Mathewson Street.

Seventh Session.

Saturday, December 29, 10:00 a. m.,
Manning Hall.

Government of Dependencies.

Helping to Govern India—Charles Johnston, late of the British India Civil Service, Flushing, N. Y.

Responsible Government in the British Colonial System — Professor Stephen Leacock, McGill University.

Spanish Administration of Philippine Commerce — Professor Chester Lloyd Jones, University of Pennsylvania.

Some Effects of Outlying Dependencies upon the People of the United States—Mr. Hency C. Morris, Chicago, Illinois.

The Executive Council of Porto Rico (read by title only)—Hon. William F. Willoughby, Treasurer of Porto Rico, San Juan, Porto Rico.

Eighth Session.

Saturday, December 29, 3:00 p. m.,
Manning Hall.

Section on Government of Dependencies.

The Need of a Scientific Study of Colonial Problems—Professor Alleyne Ireland, Boston, Mass.

The Question of Terminology—Mr. Alpheus H. Snow, Washington, D. C.

Popular Interest in Insular Possessions—Mr. Poultney Bigelow, New York, N. Y.

Commercial Relations between Dependencies and the Governing Country—Mr. O. P. Austin, Chief of United States Bureau of Statistics.

General Discussion of the Aims and Methods of the Section on Government of Dependencies.

PAPERS AND DISCUSSIONS

THE REVISION OF THE GENEVA CONVENTION, 1906.

BY REAR ADMIRAL C. S. SPERRY,
U. S. NAVY, DELEGATE.

In June, 1859, a benevolent Swiss gentleman, M. Henri Dunant, finding himself in the vicinity of Solferino, visited the battlefield, and his book, the Souvenir de Solferino, aroused the profoundest commiseration for the suffering of the forty thousand wounded for whose care the regular sanitary service was utterly inadequate, and for whose succor the unorganized efforts of limitless charity were unavailing. M. Dunant urged on the public attention measures for the amelioration of the condition of the sick and wounded, first through the Genevese Society of Public Utility, of which he was a member, and later through the Swiss Federal Council. The Council eventually called an international conference and after a brief session in Geneva this conference adopted The Geneva Convention of August 22d, 1864.

It was speedily recognized that the rules needed amendment, and should be extended to maritime warfare, and for this purpose the so-called Additional Articles were adopted by a second Conference which met in Geneva in October, 1868. The Additional Articles were never ratified, but nevertheless they repeatedly served as a rule of conduct in war and it should always be borne in mind that a well digested body of rules, such as the Additional Articles, or the Brussels Convention of 1874, although they may never be ratified, yet serve as a basis for humane consideration and for future conferences. No such labor is lost.

The first great example of the relief of suffering in war was that given by our own Sanitary Commission, constituted by the President's order of June, 1861, at the instance of a committee of delegates from various earlier societies who met in Washington in May.

Throughout the four years of civil war the agents of the Commission were on every battlefield and thousands of wounded were relieved. Millions of voluntary contributions were dispensed in aid and the practices established in that war are now embodied in existing conventions. The work of the Sanitary Commission still lives in the grateful remembrance of thousands of veterans, and the distinguished gentlemen who composed that commission, some of whom are still living, can have no nobler title to the gratitude of their countrymen.

The Geneva Convention of 1864, with anticipated amendments, was adopted as Article XXI of The Hague Convention of 1899, and at the same time, The Hague Conference expressed the wish that a conference for revision should be called by the Swiss Government as speedily as practicable. The wars in South Africa and in Manchuria intervened and some of the new provisions are due to those experiences. The Conference finally met in Geneva on the eleventh of June, 1906. Thirty-five governments were represented by a notable body of delegates: There were fifteen ambassadors and ministers and eighteen officials of the diplomatic or consular service: thirty-eight officers of the army, of whom twenty were members of the medical or sanitary service: two naval officers, eight jurists and four officers of Red Cross societies. Although but few of the delegates were actually officers of voluntary aid societies, many of the military officers had been intimately associated with their work and many had served in the field during the late war in Manchuria, so that a very large proportion of the delegates were entirely familiar with the subject. It is also to be noted that a number of the most distinguished and influential members of the First Hague Conference were delegates. At the first plenary session of the Conference, June 12th, the Honorable Edouard Odier, Min-

ister of the Swiss Confederation to St. Petersburg and delegate was elected president of the Conference.

The Swiss Federal Council when it issued the call for the Conference in March, 1906, submitted to the several governments a List of Questions to be Examined with a View to a Revision of the Geneva Convention of August 22d, 1864.

These questions, which had been prepared with great care and with due consideration of the actual conditions developed during the great wars of the past forty years, were accepted as a basis when the Conference met. No questions relating to sea warfare were taken up for the reason that the only ratified Convention for the treatment of sick and wounded in maritime warfare is that adopted by The Hague Conference of 1899 and its revision and extension, in conformity to the new Convention for Land Warfare, would naturally be taken up by the next Conference, which is expected to assemble at The Hague in May, 1907.

The form of the new Convention is such that the articles relating to the conduct of forces in the field can readily be separated from the diplomatic provisions, and the first chapter is logically devoted to the treatment of the sick and wounded.

CHAPTER I.

The Sick and Wounded.

ARTICLE 1.

Officers, soldiers, and other persons officially attached to armies, who are sick or wounded, shall be respected and cared for, without distinction of nationality, by the belligerent in whose power they are.

A belligerent, when compelled to leave his wounded in the hands of his adversary, however, shall leave with them, so far as military conditions permit, a portion of the personnel and matériel of his sanitary service to assist in caring for them.

ARTICLE 2.

Subject to the care that must be taken of them under the preceding article, the sick and wounded of an army who fall into the power of the other belligerent become prisoners of war, and the general rules of international law in respect to prisoners become applicable to them.

The belligerents remain free, however, to mutually agree upon such clauses, by way of exception or favor, in relation to the wounded or sick as they may deem proper. They shall especially have authority to agree:

1. To mutually return the sick and wounded left on the field of battle after an engagement.

2. To send back to their own country the sick and wounded who have recovered, or who are in a condition to be transported, and whom they do not desire to retain as prisoners.

3. To send the sick and wounded of the enemy to a neutral state, with the consent of the latter and on condition that it shall charge itself with their internment until the close of hostilities.

ARTICLE 3.

After every engagement the belligerent who remains in possession of the field of battle shall take measures to search for the wounded and to protect the wounded and dead from pillage and ill-treatment.

He will see that a careful examination is made of the bodies of the dead prior to their interment or incineration.

ARTICLE 4.

As soon as possible each belligerent shall forward to the authorities of their country or army the marks or military papers of identification found upon the bodies of the dead, together with a list of the names of the sick and wounded taken in charge by him.

Belligerents will keep each other mutually advised of interments and transfers, together with admissions to hospitals and deaths which occur among the sick and wounded in their hands. They will collect all objects of personal use, valuables, letters, etc., which are found upon the field of battle, or have been left by the sick or wounded who have died in sanitary formations or other establishments, for transmission to persons in interest through the authorities of their own country.

ARTICLE 5.

Military authority may make an appeal to the charitable zeal of the inhabitants to receive, and, under its supervision, to care for the sick and wounded of the armies, granting to persons responding to such appeals special protection and certain immunities.

The provisions of this chapter embody the substance of the Convention of 1864 and of the Additional Articles of 1868, which, as before noted, were never ratified. The requirement that a sanitary detachment shall remain for the care of the wounded left behind by a retreating force is new. The provision of Article 2 that, subject to the special care prescribed by the Convention, the sick and wounded become prisoners of war, throws about them the stringent protection of the Hague Convention in all that relates to their care, maintenance and correspondence with their friends; it adds to their security by removing all question as to their condition when discharged from hospitals. The remaining paragraphs of Article 2 are intended to give the widest range to the humane discretion of the commanders in the field and to cancel certain provisions

of Article VI, Convention of 1864, which were unanimously recognized as impracticable or obscure. For instance, the mandatory provision of Article VI that those whose wounds have made them incapable of further service shall be sent back to their own country, immediately raises the question of the difference between the case of a private who has lost an arm and of an officer with the same physical disablity, who might be invaluable in council. The provision of the same Article that wounded may be sent back by the enemy commander on condition of not again bearing arms during the war, is inadmissible, since the giving of a parole without permission of their own government is forbidden by the laws of most military states. The immediate exchange of wounded on the field of battle which was contemplated and possible in 1864 has become impracticable, as a rule, because of changed conditions. The increase in the effective range of artillery and small arms from a few hundred yards to thousands of yards has widened the interval between the lines and the country is generally rendered impassable by wire entanglements, mines, pitfalls and entrenchments; furthermore the whole system of transport is arranged for operation to the rear. If the Japanese had attempted to deliver the wounded to the lines of the retreating Russians after the awful carnage of Mukden few could have survived; as it was, taken to the rear by carefully organized land and sea transportation, in a few days they were safely housed in Japanese hospitals and received every care and consideration known to modern science and humanity. The provision relating to the protection of the dead is new.

Article 5 of the new Convention is a substitute for Article V of the Convention of 1864, modified on the lines suggested in Article IV of the Additional Articles of 1868. The practical immunity from the burden of war, offered by Article V of 1864 to any inhabitant extending aid, made a wounded man, or even a dead man, a valuable asset. A suffering soldier, regardless of his condition, might be dragged into any infected hovel beyond the reach of the necessary treatment until too late. In any case, the inhabitants are entitled to protection under the stringent rules of the Hague Convention.

CHAPTER II.

Sanitary Formations and Establishments.

ARTICLE 6.

Mobile sanitary formations (*i. e.*, those which are intended to accompany armies in the field) and the fixed establishments belonging to the sanitary service shall be protected and respected by belligerents.

ARTICLE 7.

The protection due to sanitary formations and establishments ceases if they are used to commit acts injurious to the enemy.

ARTICLE 8.

A sanitary formation or establishment shall not be deprived of the protection accorded by Article 6 by the fact:

1. That the personnel of a formation or establishment is armed and uses its arms in self-defense or in defense of its sick and wounded.

2. That in the absence of armed hospital attendants, the formation is guarded by an armed detachment or by sentinels acting under competent orders.

3. That arms or cartridges, taken from the wounded and not yet turned over to the proper authorities, are found in the formation or establishment.

The terms ambulance and hospital used in the Convention of 1864 have been replaced by sanitary formation and establishment, which are somewhat broader as well as more definite. The terms neuter and neutrality used in the Convention of 1864 were held to be inaccurate, both in law and in fact, as applied to sanitary formations in the field. Certainly there is none of the indifference implied by neutrality in the attitude of a patriotic sanitary personnel, even though they care for helpless friend and foe alike. Instead of using those terms there is a positive provision that sanitary establishments shall be *respected*, that is, not fired upon, and that when the action is over they shall be *protected*.

A most definite and humane extension is embodied in the new Article 8. Article I of 1864 provided that "Ambulances and military hospitals should be protected and respected by belligerents so long as any sick or wounded were therein" and that "such neutrality should cease if the ambulances and hospitals should be held by military force." That is, they would be liable to capture if momentarily vacant or if, in self-defense, or for the defense of helpless wounded, arms were carried or used either by an armed sanitary personnel or by a

guard. It is not believed that any such stringent rule was ever enforced and the immunity and right of self-protection accorded by the new Convention are in accord with humanity and the actual practice among civilized nations.

CHAPTER III.

Personnel.

ARTICLE 9.

The personnel charged exclusively with the removal, transportation, and treatment of the sick and wounded, as well as with the administration of sanitary formations and establishments, and the chaplains attached to armies, shall be respected and protected under all circumstances. If they fall into the hands of the enemy they shall not be treated as prisoners of war.

These provisions apply to the guards of sanitary formations and establishments in the case provided for in Section 2 of Article 8.

ARTICLE 10.

The personnel of volunteer aid societies, duly recognized and authorized by their own governments, who are employed in the sanitary formations and establishments of armies, are assimilated to the personnel contemplated in the preceding article, upon condition that the said personnel shall be subject to military laws and regulations.

Each state shall make known to the other, either in time of peace or at the opening, or during the progress of hostilities, and in any case before actual employment, the names of the societies which it has authorized to render assistance, under its responsibility, in the official sanitary service of its armies.

ARTICLE 11.

A recognized society of a neutral state can only lend the services of its sanitary personnel and formations to a belligerent with the prior consent of its own government and the authority of such belligerent. The belligerent who has accepted such assistance is required to notify the enemy before making any use thereof.

ARTICLE 12.

Persons described in Articles 9, 10 and 11 will continue in the exercise of their functions, under the direction of the enemy, after they have fallen into his power.

When their assistance is no longer indispensable, they will be sent back to their army or country within such period and by such route as may accord with military necessity. They will carry with them such effects, instruments, arms, and horses as are their private property.

ARTICLE 13.

While they remain in his power, the enemy will secure to the personnel mentioned in Article 9 the same pay and allowances to which persons of the same grade in his own army are entitled.

Chapter III expressly extends to the sanitary personnel, official and voluntary, the respect and protection, under all circumstances, which Chapter II guarantees to sanitary formations and establishments. Immunity can only be forfeited by acts inimical to the enemy and in plain violation of the reasonable and necessary laws of war. They continue to perform their functions toward the sick and wounded, irrespective of nationality when they fall into the hands of the enemy, becoming practically part of the enemy's sanitary service for the time being; and for this particular reason, the Conference directed, after full discussion, that the pay and allowances of the personnel should be those of persons of the like grade in the enemy's service. It is to be observed that this is a charge upon the enemy, not required to be reimbursed by the other belligerent.

The Geneva Conference of 1864 considered the subject of voluntary aid societies, but their organization was so uncertain, and so undeveloped, that it was concluded that they could not safely be made the subject of international engagements. In the interval of forty years many Orders and Societies have relieved incalculable suffering on the battlefields of the world, and their organization and work have become so firmly established that it only remained for the Conference of 1906 to recognize by treaty the actual existing practice. It was proposed to recognize by name certain of the Orders and Societies well known to the whole world for their humane activities, but it was decided that it could not properly be done in an international convention since they are entirely dependent upon the state, which incorporates as many or as few as it considers advisable. Since the Convention extends such wide immunities to the voluntary societies serving in the field, and lays upon them such weighty duties, the first consideration is that they must be responsible, which necessitates their incorporation by the state and their certification to opposing belligerents.

The regulation of neutral societies, affording active assistance to belligerents in the field, has been peculiarly embarrassing, in default of treaty agreements. It has been almost

impossible to refuse such aid offered in the name of humanity, however irresponsible the organization might seem, and yet the acceptance of such aid in South Africa resulted in violation of the ordinary laws of war by certain of the voluntary personnel and their conviction and imprisonment by sentence of court martial. The provisions in relation to neutral societies are analogous to those of The Hague Convention for hospital ships.

A proposition was made to introduce an article limiting the activity of the voluntary aid societies to the second line and rear, but although the opinion seemed to be unanimous that they ought not to be intentionally employed under fire, it was held to be entirely a matter of internal regulation.

CHAPTER IV.

Matériel.

ARTICLE 14.

If mobile sanitary formations fall into the power of the enemy, they shall retain their matériel, including the teams, whatever may be the means of transportation and the conducting personnel. Competent military authority, however, shall have the right to employ it in caring for the sick and wounded. The restitution of the matériel shall take place in accordance with the conditions prescribed for the sanitary personnel, and, as far as possible, at the same time.

ARTICLE 15.

Buildings and matériel pertaining to fixed establishments remain subject to the laws of war, but cannot be diverted from their use so long as they are necessary for the sick and wounded. Commanders of troops engaged in operations, however, may use them, in case of important military necessity, if, before such use, the sick and wounded who are in them have been provided for.

ARTICLE 16.

The matériel of aid societies admitted to the benefits of this convention, in conformity to the conditions therein established, is regarded as private property, and, as such, will be respected under all circumstances, save that it is subject to the recognized right of requisition by belligerents in conformity to the laws and usages of war.

A reasonable distinction is made between mobile sanitary formations, which are to be returned in their entirety, and fixed establishments which remain subject to the laws of war, as regulated by The Hague Convention, Article LVI of which provides that: "The property of communes, and of institu-

tions devoted to religion, charity, instruction, and to the arts and sciences, even if they belong to the state, shall be treated as private property. All seizure of, and destruction, or intentional damage done to such institutions is prohibited and should be prosecuted."

The status of the voluntary aid societies varies materially in different states, some being entirely supported by private contributions, and others receiving subventions from government. The immunity of their property was very fully discussed, one view being that it should be assimilated to that of the official establishments for simplicity; but it was finally decided to treat it as private property and avoid wounded susceptibilities and possible detriment to the interests of the societies. The right of requisition is regulated by Articles XLVII and LII of The Hague Convention, which forbid the confiscation of private property and provide that requisitions shall only be made for the necessities of the army and shall be paid for in cash if possible; if not, a receipt to be given.

It is well to note that the full significance of the new Convention can only be appreciated in connection with the humane and stringent provisions of The Hague Convention.

CHAPTER V.

Convoys of Evacuation.

ARTICLE 17.

Convoys of evacuation shall be treated as mobile sanitary formations subject to the following special provisions:

1. A belligerent intercepting a convoy may, if required by military necessity, break up such convoy, charging himself with the care of the sick and wounded whom it contains.

2. In this case the obligation to return the sanitary personnel, as provided for in Article 12, shall be extended to include the entire military personnel employed, under competent orders, in the transportation and protection of the convoy.

The obligation to return the sanitary matériel, as provided for in Article 14, shall apply to railway trains and vessels intended for interior navigation which have been especially equipped for evacuation purposes, as well as to the matériel belonging to the sanitary service, which has been used to fit out ordinary vehicles, trains and vessels.

Military vehicles, with their teams, other than those belonging to the sanitary service, may be captured.

The civil personnel and the various means of transportation obtained by

requisition, including railway matériel and vessels utilized for convoys, are subject to the general rules of international law.

Trains or convoys conveying sick or wounded are referred to in the Convention of 1864 by the highly technical and ill defined term, *evacuations*, with the vague statement that they shall be protected by an absolute neutrality. The term Convoys of Exacuation employed in the new Convention is not entirely satisfactory, but the text seems to make the meaning clear. Their treatment is assimilated to that of mobile sanitary formations since they comprise the same elements, personnel, matériel, and sick and wounded, and a definition of their status is equally necessary, since in the urgent duty of collecting and transporting the wounded, they are likely to come into contact with the enemy.

Hospital trains corresponding to mobile sanitary formations must be returned in their entirety and even the sanitary equipment of military, or ordinary, vehicles, temporarily used for the transport of wounded, must be returned. The Hague Convention for Maritime Warfare defines the status and treatment of hospital ships on the high seas and therefore this Convention refers specifically to vessels employed for the navigation of interior waters.

CHAPTER VI.

Distinctive Emblem.

ARTICLE 18.

Out of respect to Switzerland, the heraldic emblem of the red cross on a white ground, formed by the reversal of the federal colors, is continued as the emblem and distinctive sign of the sanitary service of armies.

ARTICLE 19.

This emblem appears on flags and brassards, as well as upon all matériel appertaining to the sanitary service, with the permission of the competent military authority.

ARTICLE 20.

The personnel protected in virtue of the first paragraph of Article 9, and Articles 10 and 11, will wear attached to the left arm a brassard bearing a red cross on a white ground, which will be issued and stamped by competent military authority, and accompanied by a certificate of identity in the case of persons attached to the sanitary service of armies who do not have military uniform.

ARTICLE 21.

The distinctive flag of the convention can only be displayed over the sanitary formations and establishments which the convention provides shall be respected, and with the consent of the military authorities. It shall be accompanied by the national flag of the belligerent to whose service the formation or establishment is attached.

Sanitary formations which have fallen into the power of the enemy, however, shall fly no other flag than that of the Red Cross so long as they continue in that situation.

ARTICLE 22.

The sanitary formations of neutral countries which, under the conditions set forth in Article 11, have been authorized to render their services, shall fly, with the flag of the convention, the national flag of the belligerent to which they are attached. The provisions of the second paragraph of the preceding article are applicable to them.

ARTICLE 23.

The emblem of the red cross on a white ground and the words *Red Cross* or *Geneva Cross* may only be used, whether in time of peace or war, to protect or designate military formations and establishments, the personnel and matériel protected by the convention.

Objections have been made by certain non-Christian states to the use of the Cross on the flag of the Convention because of its supposed religious significance, but the statement contained in Article 18, which is true as a matter of history, was accepted as satisfactory by the delegates of several non-Christian states present. The Red Cross flag is firmly fixed in the minds of the whole world as the emblem of mercy and it was felt that any change would be detrimental to the interests of humanity.

The restrictions placed upon the issue and use of the Red Cross flag and brassard in the field are obviously necessary to prevent abuse by individuals and also to establish responsibility for the display of the flag in improper places, or in undue numbers, in a besieged town; a procedure certain to involve irritating charges of bad faith.

The Convention of 1864 provided that the national flag should always be displayed together with the Red Cross, but left undecided what national flag should be displayed over a neutral formation in the service of a belligerent, an uncertainty which led to considerable ill-feeling in South Africa. Formations in the power of the enemy fly only the Red Cross

flag since to hoist the enemy's flag would be humiliating and the display of the flag of the opposing belligerent might lead to dangerous confusion.

CHAPTER VII.

Application and Execution of the Convention.

ARTICLE 24.

The provisions of the present convention are obligatory only on the contracting powers, in case of war between two or more of them. The said provisions shall cease to be obligatory if one of the belligerent powers should not be signatory to the convention.

ARTICLE 25.

It shall be the duty of the commanders-in-chief of the belligerent armies to provide for the details of execution of the foregoing articles, as well as for unforeseen cases, in accordance with the instructions of their respective governments, and conformably to the general principles of this convention.

ARTICLE 26.

The signatory governments shall take the necessary steps to acquaint their troops, and particularly the protected personnel, with the provisions of this convention and to make them known to the people at large.

Article 25 is an important safeguard against arbitrary decisions in unforeseen cases.

The education of the troops, and of the people at large in the provisions of the Convention is a matter of the gravest importance, too often neglected, and should be thoroughly and systematically accomplished in time of peace. The protected personnel, military and voluntary, are as impulsively patriotic as their brothers in arms, and since they may at any time be called upon to continue the performance of their duties under direction of the enemy, they must be educated to instinctively avoid any action which could be held to be an abuse of the immunity extended to them in the cause of humanity. The education of the people can probably be best effected through the wide and benevolent activities of the Red Cross. It is not safe to rely upon their uninstructed instinct of humanity.

A translation of the Convention is appended to this paper, and the remaining articles require no comment. There was entire unanimity of sentiment from first to last in the extension of the humane provisions of the Convention of 1864,

no proposition of that kind being voted down and questions of detail were settled speedily and satisfactorily.

War is, and must remain, the ultimate safeguard of the nation's life and honor, but the occasions for war may be limited by providing ready and honorable facilities for arbitration, and by treaty definitions of neutral and belligerent rights and duties, so clearly drawn, and so practicable, that they do not raise more contentions than they allay; always remembering, too, that agreements which unduly restrict the legitimate operations of war are not humane but only serve to prolong the sacrifice.

CONVENTION FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED OF ARMIES IN THE FIELD.

RATIFIED BY THE UNITED STATES, JANUARY 2, 1907.

His Majesty the Emperor of Germany, King of Prussia; His Excellency the President of the Argentine Republic; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary; His Majesty the King of the Belgians; His Royal Highness the Prince of Bulgaria; His Excellency the President of the Republic of Chile; His Majesty the Emperor of China; His Majesty the King of the Belgians, Sovereign of the Congo Free State; His Majesty the Emperor of Corea; His Majesty the King of Denmark; His Majesty the King of Spain; the President of the United States of America; the President of the United States of Brazil; the President of the United Mexican States; the President of the French Republic; His Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India; His Majesty the King of the Hellenes; the President of the Republic of Guatemala; the President of the Republic of Honduras; His Majesty the King of Italy; His Majesty the Emperor of Japan; His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau; His Highness the Prince of Montenegro; His Majesty the King of Norway; Her Majesty the Queen of the Netherlands; the President of the Republic of Peru; His Imperial Majesty the Shah of Persia; His Majesty the King of Portugal and of the Algarves, etc.; His Majesty the King of Roumania; His Majesty the Emperor of All the

Russias; His Majesty the King of Servia; His Majesty the King of Siam; His Majesty the King of Sweden; the Swiss Federal Council; the President of the Oriental Republic of Uruguay,

Being equally animated by the desire to lessen the inherent evils of warfare as far as is within their power, and wishing for this purpose to improve and supplement the provisions agreed upon at Geneva on August 22, 1864, for the amelioration of the condition of the wounded in armies in the field,

Have decided to conclude a new convention to that effect, and have appointed as their plenipotentiaries, to wit:

His Majesty the Emperor of Germany, King of Prussia:
His Excellency the Chamberlain and Actual Privy Councilor A. de Bülow, Envoy Extraordinary and Minister Plenipotentiary at Berne,
General of Brigade Baron de Manteuffel,
Medical Inspector and Surgeon-General Dr. Villaret (with rank of general of brigade),
Dr. Zorn, Privy Councilor of Justice, ordinary professor at law at the University of Bonn, Solicitor of the Crown;

His Excellency the President of the Argentine Republic:
His Excellency Mr. Enrique B. Moreno, Envoy Extraordinary and Minister Plenipotentiary at Berne,
Mr. Molina Salas, Consul-General in Switzerland;

His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary:
His Excellency Baron Heidler de Egeregg et Syrgenstein, Actual Privy Councilor, Envoy Extraordinary and Minister Plenipotentiary at Berne;

His Majesty the King of the Belgians:
Colonel of Staff Count de T'Serclaes, Chief of Staff of the Fourth Military District;

His Royal Highness the Prince of Bulgaria:
Dr. Marin Rousseff, Chief Medical Officer,
Captain of Staff Boris Sirmanoff;

His Excellency the President of the Republic of Chile:
Mr. Augustin Edwards, Envoy Extraordinary and Minister Plenipotentiary;

His Majesty the Emperor of China:
His Excellency Mr. Lou Tseng Tsiang, Envoy Extraordinary and Minister Plenipotentiary to The Hague;

His Majesty the King of the Belgians, Sovereign of the Congo Free State:
Colonel of Staff Count de T'Serclaes, Chief of Staff of the Fourth Military District of Belgium;

His Majesty the Emperor of Corea:
His Excellency Mr. Tsunetada Kato, Envoy Extraordinary and Minister Plenipotentiary of Japan to Brussels;

His Majesty the King of Denmark:
Mr. Laub, Surgeon-General, Chief of the Medical Corps of the Army;

His Majesty the King of Spain:
His Excellency Mr. Silverio de Baguer y Corsi, Count of Baguer, Minister Resident;

The President of the United States of America:
Mr. William Cary Sanger, former Assistant Secretary of War of the United States of America,
Rear-Admiral Charles S. Sperry, President of the Naval War College,
Brigadier-General George B. Davis, Judge-Advocate-General of the Army,
Brigadier-General Robert M. O'Reilly, Surgeon-General of the Army;

The President of the United States of Brazil:
Dr. Carlos Lemgruber-Kropf, Chargé d'Affaires at Berne,
Colonel of Engineers Roberto Trompowski, Leitao d'Almeida, Military Attaché to the Brazilian Legation at Berne;

The President of the United Mexican States:
General of Brigade José Maria Perez;

The President of the French Republic:
His Excellency Mr. Révoil, Ambassador to Berne,
Mr. Louis Renault, Member of the Institute of France, Minister Plenipotentiary, Jurisconsult of the Ministry of Foreign Affairs, Professor in the Faculty of Law at Paris,
Colonel Olivier of Reserve Artillery,
Chief Surgeon Pauzat of the Second Class;

His Majesty the King of the United Kingdom of Great Britain and Ireland, Emperor of India:
Major-General Sir John Charles Ardagh, K. C. M. G., K. C. L. E., C. B.,
Professor Thomas Erskine Holland, K. C., D. C. L.,
Sir John Furley, C. B.,
Lieutenant-Colonel William Grant Macpherson, C. M. G., R. A. M. C.;

His Majesty the King of the Hellenes:
Mr. Michel Kebedgy, Professor of International Law at the University of Berne;

The President of the Republic of Guatemala:
Mr. Manuel Arroyo, Chargé d'Affaires at Paris,
Mr. Henri Wiswald, Consul-General at Berne, residing at Geneva;

The President of the Republic of Honduras:
Mr. Oscar Hœpfl, Consul-General to Berne;

His Majesty the King of Italy:
Marquis Roger Maurigi di Castel Maurigi, Colonel in His Army, Grand Officer of His Royal Order of the SS. Maurice and Lazare,
Major-General Giovanni Randone, Military Medical Inspector, Commander of His Royal Order of the Crown of Italy;

His Majesty the Emperor of Japan:
His Excellency Mr. Tsunetada Kato, Envoy Extraordinary and Minister Plenipotentiary to Brussels;

His Royal Highness the Grand Duke of Luxemburg, Duke of Nassau:
Staff Colonel Count de T'Serclaes, Chief of Staff of the Fourth Military District of Belgium;

His Highness the Prince of Montenegro:
Mr. E. Odier, Envoy Extraordinary and Minister Plenipotentiary of the Swiss Confederation in Russia,
Colonel Mürset, Chief Surgeon of the Swiss Federal Army;

His Majesty the King of Norway:
Captain Daae, of the Medical Corps of the Norwegian Army;

Her Majesty the Queen of the Netherlands:
Lieutenant-General (retired) Jonkheer J. C. C. den Beer Poortugael, Member of the Council of State,
Colonel A. A. J. Quanjer, Chief Medical Officer, First Class;

The President of the Republic of Peru:
Mr. Gustavo de la Fuente, First Secretary of the Legation of Peru at Paris;

His Imperial Majesty the Shah of Persia:
His Excellency Mr. Samad Khan Momtaz-os-Saltaneh, Envoy Extraordinary and Minister Plenipotentiary at Paris;

His Majesty the King of Portugal and of the Algarves, etc.:
His Excellency Mr. Alberto d'Oliveira, Envoy Extraordinary and Minister Plenipotentiary at Berne,
Mr. José Nicolau Raposo-Botelho, Colonel of Infantry, former Deputy, Superintendent of the Royal Military College at Lisbon;

His Majesty the King of Roumania:
Dr. Sache Stephanesco, Colonel of Reserve;

His Majesty the Emperor of All the Russias:
His Excellency Privy Councilor de Martens, Permanent Member of the Council of the Ministry of Foreign Affairs of Russia;

His Majesty the King of Servia:
Mr. Milan St. Markovitch, Secretary-General of the Ministry of Justice,
Colonel Dr. Sondermayer, Chief of the Medical Division of the War Ministry;

His Majesty the King of Siam:
Prince Charoon, Chargé d'Affaires at Paris,
Mr. Corragioni d'Orelli, Counselor of Legation at Paris;

His Majesty the King of Sweden:
M. Sörensen, Chief Surgeon of the Second Division of the Army;

The Swiss Federal Council:
Mr. E. Odier, Envoy Extraordinary and Minister Plenipotentiary in Russia,
Colonel Mürset, Chief Surgeon of the Federal Army;

The President of the Oriental Republic of Uruguay:
Mr. Alexandre Herosa, Chargé d'Affaires at Paris,

Who, after having communicated to each other their full powers, found in good and due form, have agreed on the following:

CHAPTER I.

The Sick and Wounded.

ARTICLE 1.

Officers, soldiers, and other persons officially attached to armies, who are sick or wounded, shall be respected and cared for, without distinction of nationality, by the belligerent in whose power they are.

A belligerent, when compelled to leave his wounded in the hands of his adversary, however, shall leave with them, so far as military conditions permit, a portion of the personnel and matériel of his sanitary service to assist in caring for them.

ARTICLE 2.

Subject to the care that must be taken of them under the preceding article, the sick and wounded of an army who fall into the power of the other belligerent become prisoners of war, and the general rules of international law in respect to prisoners become applicable to them.

The belligerents remain free, however, to mutually agree upon such clauses, by way of exception or favor, in relation to the wounded or sick as they may deem proper. They shall especially have authority to agree:

1. To mutually return the sick and wounded left on the field of battle after an engagement.

2. To send back to their own country the sick and wounded who have recovered, or who are in a condition to be transported, and whom they do not desire to retain as prisoners.

3. To send the sick and wounded of the enemy to a neutral state, with the consent of the latter and on condition that it shall charge itself with their internment until the close of hostilities.

ARTICLE 3.

After every engagement the belligerent who remains in possession of the field of battle shall take measures to search for the wounded and to protect the wounded and dead from pillage and ill-treatment.

He will see that a careful examination is made of the bodies of the dead prior to their interment or incineration.

ARTICLE 4.

As soon as possible each belligerent shall forward to the authorities of their country or army the marks or military papers of identification found upon the bodies of the dead, together with a list of the names of the sick and wounded taken in charge by him.

Belligerents will keep each other mutually advised of interments and transfers, together with admissions to hospitals and deaths which occur among the sick and wounded in their hands. They will collect all objects of personal use, valuables, letters, etc., which are found upon the field of

battle, or have been left by the sick or wounded who have died in sanitary formations or other establishments, for transmission to persons in interest through the authorities of their own country.

ARTICLE 5.

Military authority may make an appeal to the charitable zeal of the inhabitants to receive, and, under its supervision, to care for the sick and wounded of the armies, granting to persons responding to such appeals special protection and certain immunities.

CHAPTER II.

Sanitary Formations and Establishments.

ARTICLE 6.

Mobile sanitary formations (*i. e.*, those which are intended to accompany armies in the field) and the fixed establishments belonging to the sanitary service shall be protected and respected by belligerents.

ARTICLE 7.

The protection due to sanitary formations and establishments ceases if they are used to commit acts injurious to the enemy.

ARTICLE 8.

A sanitary formation or establishment shall not be deprived of the protection accorded by Article 6 by the fact:

1. That the personnel of a formation or establishment is armed and uses its arms in self-defense or in defense of its sick and wounded.

2. That in the absence of armed hospital attendants, the formation is guarded by an armed detachment or by sentinels acting under competent orders.

3. That arms or cartridges, taken from the wounded and not yet turned over to the proper authorities, are found in the formation or establishment.

CHAPTER III.

Personnel.

ARTICLE 9.

The personnel charged exclusively with the removal, transportation, and treatment of the sick and wounded, as well as with the administration of sanitary formations and establishments, and the chaplains attached to armies, shall be respected and protected under all circumstances. If they fall into the hands of the enemy they shall not be treated as prisoners of war.

These provisions apply to the guards of sanitary formations and establishments in the case provided for in Section 2 of Article 8.

ARTICLE 10.

The personnel of volunteer aid societies, duly recognized and authorized by their own governments, who are employed in the sanitary formations and establishments of armies, are assimilated to the personnel contemplated in the preceding article, upon condition that the said personnel shall be subject to military laws and regulations.

Each state shall make known to the other, either in time of peace or at the opening, or during the progress of hostilities, and in any case before actual employment, the names of the societies which it has authorized to render assistance, under its responsibility, in the official sanitary service of its armies.

ARTICLE 11.

A recognized society of a neutral state can only lend the services of its sanitary personnel and formations to a belligerent with the prior consent of its own government and the authority of such belligerent. The belligerent who has accepted such assistance is required to notify the enemy before making any use thereof.

ARTICLE 12.

Persons described in Articles 9, 10 and 11 will continue in the exercise of their functions, under the direction of the enemy, after they have fallen into his power.

When their assistance is no longer indispensable, they will be sent back to their army or country within such period and by such route as may accord with military necessity. They will carry with them such effects, instruments, arms, and horses as are their private property.

ARTICLE 13.

While they remain in his power, the enemy will secure to the personnel mentioned in Article 9 the same pay and allowances to which persons of the same grade in his own army are entitled.

CHAPTER IV.

Matériel.

ARTICLE 14.

If mobile sanitary formations fall into the power of the enemy, they shall retain their matériel, including the teams, whatever may be the means of transportation and the conducting personnel. Competent military authority, however, shall have the right to employ it in caring for the sick and wounded. The restitution of the matériel shall take place in accordance with the conditions prescribed for the sanitary personnel, and, as far as possible, at the same time.

ARTICLE 15.

Buildings and matériel pertaining to fixed establishments remain subject to the laws of war, but cannot be diverted from their use so long as they are necessary for the sick and wounded. Commanders of troops engaged in operations, however, may use them, in case of important military necessity, if, before such use, the sick and wounded who are in them have been provided for.

ARTICLE 16.

The matériel of aid societies admitted to the benefits of this convention, in conformity to the conditions therein established, is regarded as private property, and, as such, will be respected under all circumstances, save that it is subject to the recognized right of requisition by belligerents in conformity to the laws and usages of war.

CHAPTER V.

Convoys of Evacuation.

ARTICLE 17.

Convoys of evacuation shall be treated as mobile sanitary formations subject to the following special provisions:

1. A belligerent intercepting a convoy may, if required by military necessity, break up such convoy, charging himself with the care of the sick and wounded whom it contains.

2. In this case the obligation to return the sanitary personnel, as provided for in Article 12, shall be extended to include the entire military personnel employed, under competent orders, in the transportation and protection of the convoy.

The obligation to return the sanitary matériel, as provided for in Article 14, shall apply to railway trains and vessels intended for interior navigation which have been especially equipped for evacuation purposes, as well as to the matériel belonging to the sanitary service, which has been used to fit out ordinary vehicles, trains and vessels.

Military vehicles, with their teams, other than those belonging to the sanitary service, may be captured.

The civil personnel and the various means of transportation obtained by requisition, including railway matériel and vessels utilized for convoys, are subject to the general rules of international law.

CHAPTER VI.

Distinctive Emblem.

ARTICLE 18.

Out of respect to Switzerland, the heraldic emblem of the red cross on a white ground, formed by the reversal of the federal colors, is continued as the emblem and distinctive sign of the sanitary service of armies.

ARTICLE 19.

This emblem appears on flags and brassards, as well as upon all matériel appertaining to the sanitary service, with the permission of the competent military authority.

ARTICLE 20.

The personnel protected in virtue of the first paragraph of Article 9, and Articles 10 and 11, will wear attached to the left arm a brassard bearing a red cross on a white ground, which will be issued and stamped by competent military authority, and accompanied by a certificate of identity in the case of persons attached to the sanitary service of armies who do not have military uniform.

ARTICLE 21.

The distinctive flag of the convention can only be displayed over the sanitary formations and establishments which the convention provides shall be respected, and with the consent of the military authorities. It shall be accompanied by the national flag of the belligerent to whose service the formation or establishment is attached.

Sanitary formations which have fallen into the power of the enemy, however, shall fly no other flag than that of the Red Cross so long as they continue in that situation.

ARTICLE 22.

The sanitary formations of neutral countries which, under the conditions set forth in Article 11, have been authorized to render their services, shall fly, with the flag of the convention, the national flag of the belligerent to which they are attached. The provisions of the second paragraph of the preceding article are applicable to them.

ARTICLE 23.

The emblem of the red cross on a white ground and the words *Red Cross* or *Geneva Cross* may only be used, whether in time of peace or war, to protect or designate military formations and establishments, the personnel and matériel protected by the convention.

CHAPTER VII.

Application and Execution of the Convention.

ARTICLE 24.

The provisions of the present convention are obligatory only on the contracting powers, in case of war between two or more of them. The said provisions shall cease to be obligatory if one of the belligerent powers should not be signatory to the convention.

ARTICLE 25.

It shall be the duty of the commanders-in-chief of the belligerent armies to provide for the details of execution of the foregoing articles, as well as for unforeseen cases, in accordance with the instructions of their respective governments, and conformably to the general principles of this convention.

ARTICLE 26.

The signatory governments shall take the necessary steps to acquaint their troops, and particularly the protected personnel, with the provisions of this convention and to make them known to the people at large.

CHAPTER VIII.

Repression of Abuses and Infractions.

ARTICLE 27.

The signatory powers whose legislation may not now be adequate engage to take or recommend to their legislatures such measures as may be necessary to prevent the use, by private persons or by societies other than those upon which this convention confers the right thereto, of the emblem or name of the Red Cross or Geneva Cross, particularly for commercial purposes by means of trade-marks or commercial labels.

The prohibition of the use of the emblem or name in question shall take effect from the time set in each act of legislation, and at the latest five years after this convention goes into effect. After such going into effect, it shall be unlawful to use a trade-mark or commercial label contrary to such prohibition.

ARTICLE 28.

In the event of their military penal laws being insufficient, the signatory governments also engage to take, or to recommend to their legislatures, the necessary measures to repress, in time of war, individual acts of pillage and ill-treatment of the sick and wounded of the armies, as well as to punish, as usurpations of military insignia, the wrongful use of the flag and brassard of the Red Cross by military persons or private individuals not protected by the present convention.

They will communicate to each other through the Swiss Federal Council the measures taken with a view to such repression, not later than five years from the ratification of the present convention.

General Provisions.

ARTICLE 29.

The present convention shall be ratified as soon as possible. The ratifications will be deposited at Berne.

A record of the deposit of each act of ratification shall be prepared, of which a duly certified copy shall be sent, through diplomatic channels, to each of the contracting powers.

ARTICLE 30.

The present convention shall become operative, as to each power, six months after the date of deposit of its ratification.

ARTICLE 31.

The present convention, when duly ratified, shall supersede the Convention of August 22, 1864, in the relations between the contracting states.

The Convention of 1864 remains in force in the relations between the parties who signed it but who may not also ratify the present convention.

ARTICLE 32.

The present convention may, until December 31, proximo, be signed by the powers represented at the conference which opened at Geneva on June 11, 1906, as well as by the powers not represented at the conference who have signed the Convention of 1864.

Such of these powers as shall not have signed the present convention on or before December 31, 1906, will remain at liberty to accede to it after that date. They shall signify their adherence in a written notification addressed to the Swiss Federal Council, and communicated to all the contracting powers by the said Council.

Other powers may request to adhere in the same manner, but their request shall only be effective if, within the period of one year from its notification to the Federal Council, such Council has not been advised of any opposition on the part of any of the contracting powers.

ARTICLE 33.

Each of the contracting parties shall have the right to denounce the present convention. This denunciation shall only become operative one year after a notification in writing shall have been made to the Swiss Federal Council, which shall forthwith communicate such notification to all the other contracting parties.

This denunciation shall only become operative in respect to the power which has given it.

IN FAITH WHEREOF the plenipotentiaries have signed the present convention and affixed their seals thereto.

Done at Geneva, the sixth day of July, one thousand nine hundred and six, in a single copy, which shall remain in the archives of the Swiss Confederation, and certified copies of which shall be delivered to the contracting parties through diplomatic channels.

[Here follow the signatures.]

FINAL PROTOCOL OF THE CONFERENCE FOR THE REVISION OF THE GENEVA CONVENTION.

The conference convened by the Swiss Federal Council with a view to the revision of the International Convention of August 22, 1864, for the amelioration of the condition of soldiers wounded in the field, met at Geneva on June 11, 1906. The Powers hereinafter enumerated took part in the conference, for which they had named the following delegates:

GERMANY, &C., &C.

* * * * * * * *

In a series of meetings held between the 11th of June and the 5th of July, 1906, the Conference discussed and decided upon the text of a convention to bear date of July 6, 1906, for the submission to the plenipotentiaries for their signatures.

In addition thereto, and in conformity with Article 16 of the convention for the pacific settlement of international conflicts, of the 29th of July, 1899, which has recognized arbitration as the most efficacious, and at the same time the most equitable means of settling litigations which have not been determined through the diplomatic channels, the Conference has expressed the following wish.

The Conference expresses the wish that, to reach an interpretation and an application as exact as possible of the Convention of Geneva, the contracting Powers shall submit to the Permanent Court of The Hague, if the case and the circumstances permit, the differences, which in time of peace, may arise between them as to the interpretation of the Convention.

This wish was voted for by the following states:

[All excepting three.]

* * * * * * * *

This wish was rejected by the following states: Corea, Great Britain, and Japan.

IN FAITH WHEREOF the delegates have signed the present protocol.

Done at Geneva, the sixth day of July, one thousand nine hundred and six, in a single copy, which shall remain in the archives of the Swiss Confederation, and certified copies of which shall be delivered to the contracting parties through diplomatic channels.

[Here follow the signatures.]

THE NEWPORT CHARTER.

BY ADMIRAL CHADWICK.

Newport, with the exception of three years, was until 1853 administered under the town-meeting system. It had, in 1784, made a trial of a city charter, but it was so unsatisfactory that it reverted to the town meeting three years later. The reason of this reversion in March, 1787, as given in *Rhode Island Schedules* for 1786-1790, is worth quoting. The petition to the Legislature complained that since the incorporation, about two years since, they had "experienced many Inconveniences and Indignities unknown to them before said Incorporation, injurious to their Property and civil Liberty and incompatible with the Rights of Freemen: That the Choice of the Mayor, Aldermen and Common Council is effected by a few leading, influential Men, who when chosen, have the Appointment of all the City Officers, independent of the Sufferages of the People, which they conceive to be a Derogation of those Rights and Immunities, which Freemen are indisputably entitled to, and for which so much Blood and Treasure has (sic) been exhausted." It reads uncommonly like a complaint of to-day.

The "town meeting" may thus be taken as Newport's form of government for two hundred and more years. In 1853, when a new trial of a charter was made, the place had about 12,000 inhabitants, half its present number. That it was still not too large for the town-meeting system is shown by the fact that Boston remained a town until 1822, at which time it had 43,000 population. Brookline, perhaps the most admirably administered community in the United States, remains a town, although with a population of 25,000, and an electorate of about 4,100.

Newport, with its city government of the usual kind in the United States—a mayor, a board of five aldermen and a Council of fifteen members—was no worse off than most other

places. The system is simply fundamentally bad, and can, under our electoral methods, only work towards an oligarchy, and this oligarchy, as a rule, made up, to put it mildly, of not the best citizens. Our cities have copied the patterns of government established for the states, *i. e.*, a governor, a lower and an upper house; a system excellent for a state in which the legislature is a law-making body, but foolish for a town in which the chief concern is administration. So far have we carried imitation, that the mayor of the pettiest city now indulges in his inaugural address, quite after the manner of the President of the United States.

Newport is one of several small places peculiarly conditioned. It is without manufactures or commerce, and its well-being depends entirely upon the fact that a large number of wealthy people have adopted it as a summer residence. This class pays 63 per cent of the taxes, the total of which in 1906 was $573,754.80, on a real estate valuation of $36,001,600, and a personal of $11,811,300, or a total of about $48,000,000. The tax rate was $12.00 the thousand.

It would be supposed that common sense would lead to the nursing of the goodwill of such a valuable element as are our summer residents, and this is undoubtedly the attitude of the mass of our citizens, but there has not been heretofore the intelligence in the city government itself to recognize this. Broadly speaking there has been not so much an antagonistic as a careless attitude towards the summer people on the part of the government, which, for instance, saw greater advantages in laying concrete sidewalks (wholly at the city's expense, be it said) in the voting districts, than in spending money on the upkeep of the roads so necessary for the use of pleasure vehicles.

The result of the general dissatisfaction with this crude and unintelligent attitude of the administrative authorities was the formation in September, 1905, of a municipal association devoted to bettering municipal conditions which limited its membership to those who were willing to support principles which may be condensed as follows: the use of the referendum, by which is meant the right and opportunity of the citi-

zens to vote upon all important matters affecting the property and welfare of the city; the careful safeguarding of the city's property and franchise rights and the conduct of its business upon business principles; that citizenship involves a responsibility that cannot be evaded or ignored without contributing to the forces of evil; that by nominations of its own or through the endorsement of nominations by others the association will seek to secure the choice of the best men available, irrespective of party.

The municipal election of 1905 did not materially better matters, and it was determined by the association to endeavor to formulate a new charter which might enable the city to work towards something better than what it has been experiencing. A committee of 27 was named by the association, care being taken to select from both political parties, and it may be said that, apart from questions of races (and we have many in Newport), that the committee represented every phase of our population.

In the first offgo, the chief idea was to give the mayor much greater power; an idea prevalent everywhere in the United States and indicative of a weakening of the self-reliance so necessary to the continued existence of popular government. A vote in favor of this extension of the mayor's power as a fundamental was thus carried at one of the earliest meetings. Inquiries were sent officially to various places requesting copies of new charters, and private inquiries were also made by members. A letter from the secretary of the City Club of New York, in response to one of the latter, gave a clue which resulted in the adoption of an entirely new course. The secretary said he had heard that Mr. Alfred D. Chandler, of Brookline, Massachusetts, had some particular views as to charters. Correspondence with Mr. Chandler brought his views developed in a bill which he had formulated for presentation to the Massachusetts legislature, but which was never presented. This proposed bill was the outcome of the apprehension of some of the prominent citizens of Brookline that the growth of their electorate might tend to make their town meeting un-

wieldy. Several tried their hands on proposed charters, but Mr. Chandler's draft, clinging to the town-meeting principle, proposed what he called a "limited town meeting," of 240 persons, to be elected by the whole electorate, and to have the powers of the full town meeting. It was this principle which the Newport committee of the Municipal Association adopted and built upon. The resulting charter, in its essentials, is broadly as follows: The governing power is vested in a body of 195, thirty-nine from each ward, to which is assigned the name of Representative Council, which has the powers in general of a town meeting; the executive, in a mayor and five aldermen (one alderman from each ward), elected for one year; these, speaking generally, have the powers of selectmen of a town. The cause of the choice in Newport of the particular number, 195, for the Representative Council, was due to the wards being five in number; to the making the term of office three years; and to the renewal of one-third of the Council yearly. This number was also regarded as a fair mean; as not too large for orderly procedure, and large enough to be fairly representative of all classes in a place of 25,000 inhabitants. In a larger town it could very properly be raised to as many say as 300, which would not at all be excessive, there being many deliberative bodies in the world of such numbers.

It was arranged that in the first election nominations should be made of thirteen members for one year, and the same number for two and for three years; thereafter thirteen new members would be elected each year in each ward. Under the constitution of the state of Rhode Island, no person is allowed to vote in the election of the city council of any city, or upon any proposition to impose a tax or for the expenditure of money in any town or city, unless he shall within the year next preceding have paid a tax assessed upon property valued at least at $134. This confines the votes for members of the Representative Council to about 3,800 of the 5,100 of the general electorate of the city. The only persons under the law voted for by the whole of the electorate are the mayor and school board; the aldermen were placed by the charter under those voted for by the tax-paying vote.

The election, in order to separate it from party elections, is fixed for the first Monday in December; nomination papers are filed with the city clerk at least twelve days before this date; all candidates must give a written acceptance of candidacy; thirty signatures at least of tax-paying voters in the ward are necessary to nominate for the Representative Council; one hundred of tax-paying voters of the city to nominate for aldermen; one hundred of the general electorate to nominate for the school committee; and two hundred and fifty of the general electorate to nominate for mayor. No one can sign the papers of more persons than he is allowed to vote for. Though the aldermen must be residents of the wards for which they stand, they are voted for by the whole of the tax-paying voters of the city; the influence of ward feeling which so foolishly and unreasonably exists is thus largely eliminated in the election. Nothing can appear upon the nomination papers except the name, residence and acceptance of the candidate, the office for which nominated, and the names and addresses of the nominators. Nothing can appear upon the ballots except the name of the candidate, his residence, the office for which nominated, and such other non-political facts as the laws of the state may require.

The Representative Council meets the first Monday in January, or at such times as it may adjourn to; it must also meet upon the written request of twenty-five members or upon the request of the Board of Aldermen; such requests to be filed with the city clerk; it chooses its own chairman; the city clerk is the clerk also of the Council; it determines its own rules and judges of the election of its members; its meetings must be with open doors and its records open to public inspection; any taxpayer or voter may speak, but unless a member, shall not vote at its meetings; no compensation is allowed its members.

The Representative Council at the beginning of the year elects a city treasurer, a city clerk, a judge of probate, a probate clerk, a collector of taxes, a city solicitor, an assessor of taxes, and all such other city officers provided by law or as may be necessary and proper. It may delegate to the Board of

Aldermen the election of any officers not specially named, or by special act required to be elected by the Council; it fixes salaries and defines the duties of officers; it may by a vote of two-thirds of all the members remove an officer for misconduct or incapacity.

A very important procedure was taken from the usage of Brookline. On the first meeting in January, the chairman of the Representative Council appoints a committee of twenty-five of the members, five from each ward, to consider the budget for the ensuing year, and make report to an adjourned meeting. This report must be printed and distributed to all tax-paying voters at least seven days before the meeting of the Council to consider it. Every one is thus fully informed in regard to the proposed expenditure before the subject comes to a vote. A vote of the Council in favor of any proposition involving the expenditure of ten thousand dollars or more does not become operative for seven days; if in this time a petition be filed with the city clerk, signed by at least ten qualified electors from each ward, in addition to at least one hundred qualified electors of the city, the question must be submitted to the people. A petition of a hundred qualified electors may also oblige the Council to consider a question involving an expenditure exceeding ten thousand dollars; if this be disapproved by the Council, a referendum to the people may be called for by twice the number of petitioners in the preceding case.

The mayor is president and, *ex-officio*, a member of the Board of Aldermen. The mayor may investigate all departments and has power to suspend any city official, and bring the case before the whole Board of Aldermen. If the board sustain the charges, the official is dismissed; if not, he is restored to duty. The official has ten days, however, in which to make appeal to the Representative Council, whose action is final.

The Board of Aldermen form the several committees for the administration of the city departments; it reports their condition, with recommendations, annually to the Representative Council, which report must be published; it also attends

the meetings of the Council and gives such information as may be required. The mayor and aldermen receive salaries to be fixed by the Council, but may receive no other compensation for services rendered the city; they may not be interested in any city contract nor may any of them, stockholders in a corporation, vote upon a proposition or with reference to a contract between the city and such corporation.

It will be seen that the system developed in this charter is one of extreme simplicity. It unites all legislative power in a single body, and establishes a small committee to carry the authority of this body into effect; it brings back to the people in a very effective degree the authority which has been taken from them by political rings and combines; it separates the municipal from state and national elections; it separates the power authorizing the spending of money, from the power which expends, thus vastly increasing the difficulty of a vicious combine; in the words of the "Explanatory Statement" which accompanied the act when brought before the legislature, it "is absolutely open to the knowledge of all the people; gives the right to every one to speak upon any proposition; allows no opportunity to stifle any question; makes it easy for any one to bring forward any subject for consideration; opens the budget to full inspection and discussion by the people before it is adopted; in a word, makes the public the master it should be in all questions affecting its civic welfare." It does all this and effectively, in case the people are equal to governing themselves. My own belief is that they are. I have a firm faith in the wish and capacity of the mass of men, if their hands are free, to do that which is best for their community. Were this not so, it is plain that we should always be on the retrograde. Our political woes are due to the fact that the public will has not free expression in our country today, in either national, state, or municipal questions. It is the oligarchic rule which permeates our system, which is our bane. The great problem is to get back to the people; in the Newport charter I believe we have done this for Newport, effectively.

It is of course vain to hope that partisan politics will all at

once, or perhaps ever, wholly be eliminated. The idea of always lining up on party lines has became too deeply ingrained in the less thoughtful of our electorate throughout the country to expect this, and there are sure to be many representatives in the council to whom petty likes and dislikes will be much more than the city's welfare. How great the influence of such feeling is, was shown in the charter election of December 4, when, with three exceptions, the representatives of the summer residents, our chief taxpayers, failed of election. Our electorate is not wise or broad enough to see the unfairness of refusing representation to such an interest, and that such action practicaly establishes "taxation without representation."

A short comparison of our Newport charter with its almost antipodal of Galveston, is not inappropriate. This latter replaces a government of a mayor and sixteen aldermen with one by five commissioners. Three of these were in the first offgo appointed by the governor, but a question as to the constitutionality of this procedure, on the ground that the citizens had no voice in the selection of the officers administering their government, being decided adversely, the whole five are now elective. With these five rest all the powers of the city: the selection of officers, the establishment of ordinances, the levying and assessment of taxes, and all administrative functions. Thus far the scheme has been very successful; this success being one of course due wholly to the character of the commissioners. The great question is how long the city will be able to elect such. It is safe to predict that it will end, as all such efforts, if experiences teaches anything, in the election of the seeker after power, and the city in the hands of its five administrators and governors will be no better off than in the hands of its former sixteen.

I beg to add a few words as to my views of the abstract principles of municipal government. It is clear that a municipal corporation does not differ in principle from any other joint stock company; that the members of this corporation are shareholders in a company whose property is chiefly the property of those owning property within the municipality.

These property-holders contribute to the expenses of the corporation according to the value of their holdings exactly as the stockholders in a railway contribute to its upkeep and betterments. In the one case we pay in assessments; in the other it is taken from dividends. Being a joint stock corporation, it necessarily follows that every stockholder, whether resident or not, should have at least one vote, whether man, woman, or estate.

Of a total of about 5,800 Newport taxpayers (residents, corporations, banks and estates) only 768 pay taxes of $100 or more, and but 222 pay $500 or more. This last number, or less than four per cent. of the taxpayers, pay 63 per cent. of the taxes, or $360,137 of the total $573,755 of the taxes of this year. The 768 who pay $100, or more, pay $473,454. Of this number, 234 are women, who pay $203,791, or 43%. That those who contribute so largely to the expenses of a corporation should have no voice in naming the committee which is to handle its funds, seems to me a monstrous illogicality. The question is one in no wise connected with the subject of woman suffrage; it is a simple business principle. That it is not subversive of our views in general as to the voting of women, is shown by the fact that in England they have, as taxpayers or heads of households or a business, been able to vote in municipal elections since 1869. Such women form there about twenty per cent of the whole municipal vote. I would thus put it as a plain abstract business right that every taxpayer in the municipality, whether resident or not, and irrespective of sex, should have a vote in the affairs of a municipal corporation. Our new charter gives women taxpayers the right to speak at the meetings of the Representative Council, but I fancy this right will be seldom used. I can see no harm in going as far as England has done in this matter, and there is certainly justice and right in doing so.

THE CONSTITUTION OF THE UNITED STATES, AS MODIFIED IN THE CIVIL WAR.

BY WILLIAM B. WEEDEN.

The Constitution of the United States is one of the greatest monuments of human history. It was not a sudden creation, according to Mr. Gladstone's hasty generalization; for our scholars agree that it was a growth essentially. It is perhaps the greatest achievement recorded of compromise, which is the genius of political development. Cherishing theories of Aristotle and Montesquieu, nourished by the Common law and English political experience, strengthened by the steady progress of the colonies, the statesmen assembled in the convention of 1787 embodied the knowledge of their time. The serene Washington, the practised and facile Franklin, the far-seeing constructive Hamilton, with Madison, Wilson, Morris, Sherman and their fellows filing in; these makers of the constitution brought the largest capacity to the conformation of a written instrument, which embodied the widest experience in the art of government.

The pregnant phrases of the Preamble—forged out by Hamilton and Madison—though they soon became important guides to the meaning of the whole instrument, do not appear to have attracted much attention or excited discussion.[1]

It may be instructive to consider the ideas of J. Randolph Tucker, expressed after the facts of the Civil War had illustrated the genius and force of the original Constitution. Liberty if the "gift of God!" and the body-politic is "man's trustee, not his master."[2] As the body-politic rests on rightful sovereignty, the *de facto* institution must be taken to be the sovereign power. His great authority, Bluntschli, says "each man is at the same time member of the sovereign and subject to the sovereign."[3] He sets forth the essential char-

[1] Thorpe, *Constitutional History U. S.*, v. 3, p. 467.

[2] Tucker, *Constitution U. S.*, vol. 1, p. 14.

[3] *Ibid.*, p. 57.

acter of legitimate government: "The supremacy of the Constitution-making power over all acts of government, lies at the foundation of our political law, and is, in its full force, the great American discovery in the science of government." [4] Very forcibly he condemns usurpation: "The idea that usurpation is necessary or a supposed extension as a consequence of custom or progress of society can make jural any power not constitutionally conferred, is contrary to American political science, fatal to the liberties of the people." [5]

The actual results of the Civil War are nowhere better stated. It "decided the restoration of the Union under the Constitution as a whole—the bundle of burdens and of benefits. To that decree the seceding States bowed as final . . . the war itself did not change the Constitution in any of its terms or provisions, has been fully sanctioned by the decisions of the Supreme Court." [6]

These profound conceptions come to us as the product of time, but their germs were planted in 1787, in the formation of the instrument, which we are now to investigate.

It is agreed that our present organization is a national and federal government, combining the States and based on democracy. In the beginning, democracy was not developed so far.[7] The convention of 1787 was an advisory body only, assembled with indefinite powers, which were delegated from the sovereign power of the States. Direct ratification by the people or a plebiscite could be attained only through the States. Virginia, New Jersey and Pinckney of South Carolina submitted plans. The initiation of the convention is ascribed to Alexander Hamilton who had elaborately advocated national consolidation to Duane seven years previously; an idea shadowed forth by Franklin in 1775. The practical

[4] *Ibid.*, p. 62.

[5] *Ibid.*, p. 67. And on the limitations of governmental power he cites two great authorities. "C. J. Chase adds to Marshall with great force. And if the property of an individual cannot be transferred to the public, how much less to another individual." *Ibid.*, p. 77.

[6] *Ibid.*, p. 339.

[7] Tucker, vol. i, p. 318; Thorpe, vol. i, 305.

formation of the convention is due to Madison and his skillful management. Hamilton said little until after much debate, for his theories of national power were hardly supported by his own State. He then submitted a scheme condemning both the leading plans, especially that of New Jersey. Briefly he would exclude State sovereignty, "for a federal government was an association of independent communities in one." [8] There was much interesting discussion, and not altogether along sectional lines in general, as is often supposed. Representation and taxation of slaves gave much trouble. Roger Sherman disapproved importation, but thought it best to leave the matter as the Convention found it. Importation of slaves was finally continued, largely through South Carolina and Georgia, for Virginian interest did not lie that way. No one thought of prohibiting slavery. The true opposition in debate was against the hard, bony structure of a federal government; in this regard individuals from every section put forth strong objections.

The early discussions [9] might be termed heterogeneous exposition. They revealed personal and local characteristics, conveying impracticable notions; which fell away after sensible recognitions and conciliatory consideration of the inevitable grand categories, into which Hamilton and Madison had already cast the future of the national government.

State Right and jealous reservations of State prerogative at first underlay the action of almost all the delegates North or South. Property as well as slave representation instead of purely popular representation, at times nearly sundered the assembly. Perhaps Gerry of Massachusetts was most conspicious in distrusting democracy, though his fellows were numerous and willing. The jealous opposition of small States to the necessary power of the larger, loomed up at every turn of debate. Since the changes wrought by time and progress, we are astounded that New York aligned herself to protect her

[8] *Ibid.*, p. 376.

[9] Details of the Convention are taken broadcast from Thorpe's first volume.

small neighbors. Rufus King said generously he would never "accede to a plan of inequality (i. e. through representation) which put ten states at the mercy of Massachusetts, Pennsylvania and Virginia. Roger Sherman of Connecticut was a firm believer in State sovereignty and would have submitted the Constitution to ratification by States, when Madison demanded a plebiscite. Martin of Maryland thought the purpose of the general government should be to preserve the States, not to govern individuals. Ellsworth of Connecticut, while acting for State sovereignty, really contributed a principle of largest national import. He said that the people would reluctantly submit to a Constitution which disfranchised them, and that States were the best judges of the circumstances of their own people, and of the qualifications of voters.

The timely prohibition of taxes on exports—natural to us—was a rank innovation then, in spite of Adam Smith's arguments against them. The matter was debated with prejudice, rather than discreetly. Wilson, the ablest constitutional lawyer and a stronger nationalist than Hamilton even, urgently supported a tax. A tribunal of last resort to regulate relations between the States and central government was delimited vaguely in Article IX, the powers of the judiciary being but dimly indicated. The authority of the Supreme Court was elastic rather than definite.

After much forlorn debate including efforts to adjourn—nominally to consult constituents—a crisis was averted by appointing a Committee on Detail of Five: or as we should say, a steering committee, on which South Carolina, Virginia, Massachusetts, Connecticut and Pennsylvania were represented. Selections for committees were personal rather than sectional, being all made by ballot. It shows how fully the controlling ideas of Hamilton and Madison had permeated the Convention through debate that neither was placed on this influential committee. Discussion went on meanwhile, and in some days the committee reported an actual draft of the Constitution.

Much difficulty had been overcome in adjusting principles

of representation, in the qualifications both of voters and representatives to Congress. Some would have had a landed estate prescribed for all members of the government. But the shrewd Franklin said some of the worst rogues he had known—had been rich. Into slave representation, the personal element entered, but the factor of property occasioned quite as much trouble. Hamilton and Madison favored immigration, but the majority foreshadowed the modern "Know Nothing," literally. Curiously, Dickinson, Morris and the nationalists mostly inclined to a restricted franchise. Discussion opened wide difference of opinions, which might have fettered the United States. Franklin wisely disliked anything tending to "debase the spirit of the common people." With Ellsworth, Mason, Rutledge, as representing Connecticut, Virginia, South Carolina, he believed in extension of suffrage, and these men comprehended the true genius of America.

The times were far from comprehending the outcome of a solid control of "army and navy," likewise of the State militia. When we consider the tenacious antagonism of the fathers to monarchical or imperial government, we may wonder at their liberal treatment of this important detail. It was arranged "to raise and support armies," and provide a navy; while authority over the militia gave much difficulty, owing to State reservations so often mentioned. Mason and Pinckney would give control to Congress, while Dickinson, Ellsworth and Gerry believed the States would hardly surrender it.

The American Executive of the twentieth century was as little imagined or apprehended then, as the constitutional regulation of the planet Mars. Constituting the office caused much labor, and the method of election to it, even more. The Convention followed largely the precedents in State governments. The States seemed to agree on unity in the Executive better than on most points. The title of President was the oldest used in America. An Executive Council was much mooted, among other checks to restrain the government. We must remember that we are viewing the government of the

United States after long and successful operation. To the fathers, it seemed essential to impose all possible checks and balances. In rejecting an Executive and advisory council, Mason said they were experimenting, for even the Grand Signior had a Divan. Franklin, Wilson, Dickinson and Madison favored, but only three States finally voted for this restriction of the Executive. Participation in legislation had been scanty in the practice of Colonies and States; such conduct reverted to the ways of the early English kings. The veto was instituted at last, after much dispute. Gerry considered that the holding of the presidency of the Senate by the Vice-President, would be dangerous on account of his inevitable intimacy with the President.

The Committee of Detail quietly entertained many clauses, debate would have rejected. Later on, the pregnant and famous sweeping clause authorized Congress " to make all laws which shall be necessary and proper for carrying into execution the foregoing powers," etc.

A final Committee on Revision was raised—Hamilton and Madison serving—and it assigned the whole written expression to Gouverneur Morris, a master of style. Urging the adoption of the revision, the veteran Franklin contributed a moving letter begging that every member " would with me on this occasion doubt a little of his infallibility." It was considered that this pathetic appeal turned the scales. Yet only little Delaware and Pennsylvania—justifying its proud title of Keystone State—signed the Constitution through every delegate. The punctilious Mason, the hypercritical Gerry, the juridical Ellsworth, the broad Dickinson, all failed to approve.

Whatever the Convention intended, it made a firm Union, which gathered strength as government went on, endured wars and survived the perils of prosperity. The same laws control the relations of Union and States to-day, as prevailed in the Constitution of 1787.

Twelve amendments—added up to the year 1804—which worked out principles, did not change the character of the instrument. In the early part of the century Chief Justice Marshall developed the latent federal powers of the Constitu-

tion, first instituted by Hamilton, with far-reaching effects, as we shall see.

The Missouri Compromise in 1820, the legislative agitation concerning slavery 1850-1854, the Dred Scot decision of 1857, all tended to aid new popular conceptions of the Constitution. As Mr. Wilson [10] suggests "the life of each succeeding generation must inevitably be read into" the written instrument. Extreme Southern leaders thought secession both a sovereign and a legal right.[11] Mr. Willoughby [12] finds in their conceptions of the States "individual and sovereign political entities." [13] According to Wilson, the men of the South did not intend a serious war but they meant to bring about a constitutional crisis. Neither legislative nor juristic process could satisfy their political desires. The sources of the constitution were not juristic,[14] and revolution only could produce a new birth.

Manifestly, both South and North did not comprehend the developing powers of the constitution as interpreted by Marshall, which inevitably must exert new vital force in its own protection. The defeat at Bull Run, instead of overcoming the North, as the South hoped, only stimulated new political effort as a constitutional sequence. Congress proclaimed that "the maintenance of the Constitution, the preservation of the Union and the enforcement of the laws are sacred trusts, which must be executed." The attack on Fort Sumter immediately caused the Executive to put forth powers not expressly conferred by constitution or laws.[15] This true survival of the kingly power was fully sustained by the people, though its exercise was hardly anticipated by our forefathers.

The Civil War brought great change into every department of the government. Perhaps the judiciary yielded least, and

[10] *History American People*, vol. iv, p. 201.

[11] *Ibid.*, p. 190, and Burgess, *Civil War and Constitution*, vol. i, p. 75.

[12] *American Constitutional System*, p. 12.

[13] *American People*, vol. iv, p. 208.

[14] Burgess, *Political Science and Constitutional Law*, vol. i, p. 108.

[15] Burgess, *Civil War and Constitution*, 1 : 228.

reverted most steadily to its original courses. Suspension of the writ of habeas corpus by the President excited violent discussion. It was claimed that it could be suspended only through act of Congress. This was technical, as Congress finally gave the President ample and explicit authority. It seems to be impossible to fully protect personal liberty by nullifying arrest, and to guard the state against secret treason in the same statute. William III "wrongfully" suspended the writ in 1696, thereby saving his own life and preventing invasion of England. Parliament thanked him for exceeding his lawful authority.[16]

Emancipation was not a constitutional process, though its effects prevailed in modifying the instrument. The changes in the constitution were inherent, through the 13th, 14th and 15th amendments, abolishing slavery and granting new rights —both to persons and property; and were generative through a new spirit created out of the life of the time.

Thaddeus Stevens, the "most dominating spirit Congress had ever known" [17] imposed the fourteenth amendment, intending to bring about "dominance of negroes in the South," [18] by principles in the Constitution itself. The negro vote followed in the 15th amendment. Results actually attained for the negro, differed much from the anticipation; but enormous changes were engendered in the condition of persons and property. States were not dwarfed into municipali-

[16] I am indebted to W. E. Foster for suggestion in this matter. Providence Public Library has a large collection of original pamphlets, giving opinions of Binney, Curtis, and many others on these disputed points bearing on constitutional development. Horace Binney contended (*Privilege of the Writ of Habeas Corpus*, Philadelphia, 1862, p. 52): "The Constitution intended, that for the defence of the nation against rebellion and invasion, the power should always be open (*i. e.*, of suspension of writ) in either of these events, to be used by that department, which is the most competent in the same events to say what the public safety requires in this behalf. The President being the properest and safest depository of the power, and being the only power which can exercise it under real and effective responsibilities to the people, it is both constitutional and safe to argue that the Constitution has placed it with him."

[17] Thorpe, 3: 404.

[18] Wilson, 5: 58.

ties as Randolph Tucker [19] shows. Yet the fundamental relations of the federal government and the States have been agitated to the foundations.[20] Now, the courts have given the widest interpretation of "liberty" to the citizen. Citizenship was not defined in 1787.[21] According to Thorpe,[22] one of the greatest constitutional results of the Civil War is that sovereignty abides with the constituency and not with the agent; "that it exists with the people of a State and not in the State as a Corporation." The constituency are safe, as Tucker proves by citing Cooley, for legislators have their authority measured by the Constitution.[23]

As in 1861, poor Sambo carried his masters and his northern brethren far beyond the intended revolution, so in the constitutional amendments, he opened unknown paths and possibilities in civic development. The Slaughter House Cases soon swept away the fancied legal distinction between black and white men. Turning to a great field of governmental energy, that practical agency of federal and State relations, known as the police power, let us consult Freund.[24] He regards the restraining influence of the original constitution on the police power of the States, as more important than the opportunity for positive police legislation on the part of Congress. From causes we have observed in our study the fathers did not mean to subject outright the State police power to federal control. On the other hand, the fourteenth amendment—though wisely limited by the courts—was capable of subjecting all legislation to federal control.

We now come to the present regulation of interstate commerce. Here, as in the larger political principles involved, Marshall had laid sure foundations when he declared in Cohens vs. Virginia that the United States were a single Nation. This pregnant decision was better comprehended after the national development in 1865. The courts discov-

[19] Tucker, 2: 848.

[20] Baldwin, *Two Centuries American Law*, p. 36.

[21] Willoughby, p. 241.

[22] Thorpe, 3: 522.

[23] Tucker, 1: 379.

[24] *Police Power*, p. 65.

ered then that the national and State courts were sovereign in their own jurisdictions, but each was not sovereign in the objects committed to the other.[25] Moreover Justice Bradley declared in 1887 that the legal development of the last fifteen years had obliged the Supreme Court to revert to Marshall's fundamental principles, even to the modification of action by the Court in the intervening period. "Tom Scott," in the opportunity of the Civil War, developed systems of long and combined transportation, ready to be fitted to the new commercial necessities. The regulating act adumbrated in 1866 was passed February 4, 1887, and it regarded especially the long and short haul and non-pooling. So confused was the discussion that a member finally termed the act "one which nobody understands, nobody wants, and everybody is going to vote for." [26]

The fundamental rights of property were protected against State interference by the federal power.[27] This has now become of practical effect. For example, much harsh legislation against Corporations in Texas was overthrown. On the other hand, a law of Texas forbidding railways to allow Johnson grass or Russian thistle on roadbeds was sustained by the Supreme Court which remarked "some play must be allowed for the joints of the machine." [28] Justice, though blind, usually comprehends the situation, and in this instance person and property were both involved. The far-reaching effects on federal and State relations are gradually becoming manifest. In November a decision in a Kentucky case is reported, which changes one branch of State taxation. Hitherto in many of our States domiciled inhabitants have been taxed on all their personal property wherever situated; in other words, for property in another state, it was a tax *in personam*. The U. S. Supreme Court held that "the taxation of such property within the domicile of the owner partakes rather of the nature of an extortion than a tax." [29] Surely this is justice.

[25] Thorpe, 3: 521.

[26] *Judson Interstate Commerce*, p. 4.

[27] *Ibid.*, p. 50.

[28] *Ibid.*, p. 143.

[29] Simeon E. Baldwin, *Yale Review*, 15: 255.

As the nineteenth century waned, new and enlarged powers were prevailing in the commercial world. In 1787, foreign commerce was the immediate cause of failure in the Confederation and of calling the Convention. A century passed; there came a commerce even greater than the foreign. Noah's Ark and the Great Eastern alike had been superseded; yet greater were the changes on land. The twenty-one-foot iron rail laid after the manner of English turnpike to accommodate a possible farmer with his own steam-wagon had stretched 3000 miles across a continent. Fraught with larger consequences, were the alliances merging rails into systems tens of thousands of miles long. The wealth of Ormus and of Ind sought by Columbus, dwindled beside the loads of merchandise summoned by the genius of steam.

Among other great principles emphasized and formulated, the Supreme Court by mandatory injunction affirmed that rest was injurious; that "traffic must flow as it is wont to flow." [30]

In 1895, the law of common carriers was enlarged by the Court, "not changed" to regulate steam-transportation in a pregnant saying. "The constitution has not changed." "But it operates upon modes of interstate commerce, unknown to the fathers, and it will operate with equal force upon any new modes." [31]

None of the changes induced by these processes are of greater import than the regulation of railway rates. By the Elkins amendatory act of 1903 "the public rate is the legal rate and all rebates are unlawful." Under this act corporations are being incriminated, but a new and stringent statute was added last winter. By the "judicial process of inclusion and exclusion," these mighty throbs of the interstate pulse will be harmonized ultimately.

These railway corporations, subject to double obligations are fairly liable to governmental control, but "power to regulate is not power to destroy." [32] Monopoly needs close

[30] Judson, *Interstate Commerce*, p. 127.

[31] *Ibid.*, p. 4.

[32] Noyes, *American Railroad Rates*, p. 3.

watching, but it often serves the public better than competition. The matter is difficult, for the practice of rating on the value of service—"all the traffic will bear"—comes from the old English canals, which took the heaviest tolls on most valuable goods. There is consequent local discrimination. But it has been proven that some legislation is necessary, and railways must help conservative legislation.[33]

Judicial process only can determine the effect of our late legislation, but we may consult the opinion of one versed in the experience of the Interstate Commerce Commission. Mr. Prouty says[34] it will "prevent more than it will correct." That the payment of rebates will mainly cease. That "discriminations between localities will largely continue, and this will be the most fruitful source of complaint in time to come." How can it be avoided "unless waterways can be shut up and geographical position ignored?"

Perhaps, the greatest constitutional lesson for our generation educated by the Civil War, is furnished by the principle of a resultant in political and legal development. Legislators are practically circumscribed by expected results, while a resultant includes unforeseen impulses. When one taps a billiard ball, the direct stroke, the oblique tendency of a whirling sphere, the deviating incidence of angles, above all, the temperamental impulse of the player, combine in a final movement, which though finite surpasses the imagination. Though political and juristic results are finite, they bewilder finite minds.

The Revolutionary War culminating in the Constitution only made the federal government a "passive non-infringer of individual liberty."[35] According to Judge Baldwin[36] "a new burst of idealism followed the Civil War." The framers of the fourteenth amendment sought and gained a new foundation of all personal rights, in the support of the Judiciary. A momentous innovation, for history had not so vin-

[33] *Ibid.*, p. 259.

[34] *American Review of Reviews*, July, 1906, p. 70.

[35] Burgess, *Political Science and Constitutional Law*, 1: 185.

[36] *Two Centuries American Law*, p. 27.

dicated the person in clan-growth, feudal organization or delegated suffrage. Legislators then fondly expected to lift the black man bodily into all the powers of citizenship, even if whites were incidentally oppressed.

What was the resultant? Negro protection and development have been remanded to State control, as rigidly as Randolph or Roger Sherman might have desired. In another direction, Congress and the Courts are exceeding any legal conception possible fifty years ago, as they fashion and secure resultant privileges for property and commercial development. Call it providence, call it evolution—these ways are exceeding strange.

We need the powers of Hamilton and the great makers of the constitution to interpret the whole scope of the instrument, after the development of more than a century. The government created by the constitution has survived the conflicts of war, internal crises, and the greater perils of prosperity. Inasmuch as the written instrument embodies the conscientious, vital force and expanding power of a great people, it looms up more largely than ever in the advancing drama of the civilized world.

GOVERNMENT REGULATION OF INSURANCE COMPANIES.

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The risks or hazards to which man and his economic interests are subject may be separated into two classes: (1) speculative risks resulting from general price fluctuations, and (2) the risks of production and consumption.[1] The former fall upon a class as a whole, and hence are not readily transferred by insurance. The latter affect either individuals or small classes. They may therefore be borne by those upon whom they originally fall, or they may be shifted to other shoulders, or finally they may be distributed over the group as a whole. Primitive races are not only largely under the dominion of the aleatory forces, but they have no systematic method of distributing the losses arising from this source. Consequently the weaker individuals and those less endowed with foresight are rapidly eliminated. Nevertheless, the natural law of survival has never been allowed to operate without restraint. The family, the tribe and the nation in ancient times provided more or less effectively for the weak and unfortunate. Christianity introduced a new ideal and a new institution: the ideal of a universal brotherhood and the church as the active agency by which the burdens were alleviated. The church came to regard the care of the unfortunate and distribution of alms as its duty if not its inherent right. It thus gained a hold upon medieval society which it could probably never have attained upon purely religious grounds—a fact which may partially account for its early hostility to all forms of life insurance. Gradually the church has either abandoned or been forced to give up this field to various voluntary,

[1] For a more complete analysis of the classification of risks, see Prof. H. C. Emery on "The Place of the Speculator in the Theory of Distribution," and articles there cited in Publications of the American Economic Association, Third Series, Vol. I, No. 1, pp. 103 *et seq.*

industrial and social organizations whose bond of union is economic rather than religious. These organizations are (1) those formed primarily for industrial purposes including the guild, the labor union, the combination and the corporation. While established for other purposes, each of these institutions exercises a profound influence in distributing the risk of industry to the individual members of the group; and (2) those organized primarily for transferring risks, that is the insurance companies. The insurance companies were slow in developing, but once their economic function was appreciated their growth has been phenomenally rapid. They have thus taken upon themselves many of the burdens formerly assumed by the family, the church, and the state. The state therefore, as the ultimate sufferer from the losses which the insurance companies may lighten by transferring to many shoulders, is forced by every mandate of self-interest to see that all forms of legitimate insurance are so conducted in principle and practice that its benefits may minister to the largest possible number consistent with safety and economy.[2]

Insurance, therefore, necessitates the organization of the several groups upon which the risks naturally fall into permanent associations. Such organizations are theoretically possible without the intervention of the state. But under such circumstances rights and duties must necessarily be settled within the company itself. A government, with courts to adjudicate controversies and an army to enforce discipline, becomes essential to the existence of these organizations. Such a condition needs only to be mentioned to be discredited. The state exists to establish and maintain justice and protect life, liberty and property. As the relations of individuals are coming to be determined more and more through their membership in various economic and social organizations, the state is in duty bound to extend its functions until it includes the direct regulation of all association within its borders.

[2] For arguments opposing regulation, see paper by Henry C. Lippincott, on "State Supervision Not Properly a Function of Government," "Insurance Press," Nov. 7, 1906; and "Testimony of J. H. McIntosh, in Hearings before the Judiciary Committee, H. of R., in Relation to Insurance," 1906, pp. 120-137.

The above considerations apply to all forms of associations which are economic in their purpose. The state is under further and especial obligations to regulate insurance companies. The contract between the company and the insured is necessarily of a contingent nature [8] and often extends over a long period of time. The ability of the insured to continue payments may be impaired. To forfeit payments already made as was the custom in the early days of life insurance, defeats the purposes for which insurance exists. Such a practice not only leaves the policyholder without protection but also absorbs the means with which he might have protected himself in his hour of distress. To render insurance safe, the payments must be larger than is usually necessary to meet mortality losses and the expenses of conducting the business. Hence a return in the form of dividends. Payments less dividends thus constitute the net cost of the policy. If the price of groceries is exorbitant at A's store the housekeeper is in a position to patronize B or C. If company A is extravagant in its management or unfair in its distribution of dividends, what recourse has the policyholder? To surrender his policy? Even under the most liberal surrender values and with the most meager dividends such a process is always costly. His old policy has been more expensive than a term policy for the same period and the new policy purchased in its place must be taken out at an advanced age and therefore at a higher annual expense. Indeed the only recourse the individual policyholder has had under such conditions in the past except for the slight aid given by the state and the stress of competition has been an early death. Again, the enforcement of the contract often falls upon the widow or orphaned children who have in many cases neither the means nor the ability to protect themselves, and in this case to employ counsel usually makes insurance too expensive to be expedient. From these considerations it may be concluded:

(1) That regulation is a necessary function of government;

[8] Rosselet, F., Fourth International Congress of Actuaries, Vol. II, p. 240.

(2) That insurance conducted by large organizations requires more regulation than that by smaller ones;[4]

(3) That short-term insurance such as fire, marine, casualty, surety etc., demands less regulation than full life insurance;

(4) The insurance usually taken by the economically weaker classes such as industrial insurance and certain forms of assessment insurance demands more efficient regulation than that patronized by the economically stronger classes; and

(5) So salutary is the effect of insurance in all its legitimate forms that wherever and whenever the state is unable to secure safe and economical insurance from private companies through effective supervision it would seem to be its proper function if not its duty to undertake to provide such insurance through its own direct agency.

The ultimate social and economic purposes which the state has in view should largely determine, first, the scope and character of such regulation, and second the particular government authorities to which the supervision may properly be intrusted.

From the social standpoint the object should be to provide insurance adapted to the needs of the weaker industrial classes so economical and so safe that such classes may enjoy its benefits as fully and freely as their means allow. From the economic standpoint the purpose should be to secure an organization for each company so efficient and safe that insurance may be provided at the least possible cost and so representative in its government that every interest may receive its benefits in equitable proportion to its contributions to the common fund. To secure these ends four radical changes in our present policy of insurance legislation and administration is desirable if not absolutely necessary.

(1) In laws relating to incorporation and internal government of insurance companies;

(2) In the provisions for a reasonable and adequate system of publicity;

[4] This principle is applied in Germany. See paper by Dr. Von Knebel Douberitz, of Germany, in Fourth International Congress of Actuaries, Vol. II, p. 230.

(3) The transference of the control of the interstate insurance from the state to the federal government; and

(4) In the abolition of much of the present restrictive legislation.

First, the insurance company must be made up of many individuals in order to be safe and economical. Its management must be intrusted to a few to be efficient. Hence arises the problem of establishing and maintaining a strong and responsible government. The failure to accomplish this necessary end has been one of the chief causes of our recent insurance troubles. The Armstrong reports says:

"Notwithstanding their theoretical rights, policyholders have had little or no voice in the management. Intrenched behind proxies, easily collected by subservient agents and running for long periods, unless expressly revoked, the officers of these companies have occupied unassailable positions and have been able to exercise despotic power. Ownership of the entire stock of an unmixed stock corporation could scarcely give a tenure more secure. The most fertile source of evils in administration has been the irresponsibility of official power." [5]

The first step then to be taken in effecting this reform consists in remodeling our laws relating to the business organization of the companies. At this point the insurance problem is a part of the larger corporation problem—and even more complicated. For the insurance company is mutual in its natural and therefore likely to be such in its organization. The policyholder thus occupies a dual position, at once stockholder and patron. He understands the latter position, but usually has failed to appreciate the fact that his well-being as a patron depends upon how efficiently he performs his duty as a stockholder. This will be no easy problem to solve. Its effective solution will largely depend upon three conditions: first, the active interest of the policyholder; second, the efficiency of the machinery provided by which he expresses his will as to the personnel of the management and the policy of

[5] Report of Armstrong Committee, Vol. X, pp. 366-7.

the company; and third, the system of publicity provided upon which his judgment rests.

The present condition is exceptional. The policyholders are thoroughly arroused by the revelations of the Armstrong and other investigating committees. The control of vast interests is at stake. Such a campaign as that which has been waged is likely to occur only once or twice in a lifetime. When apathy succeeds interest, then the machinery governing the election of directors and the dissemination of information needs to be so easily and almost automatically operated that the administration shall under all circumstances be at once efficient and responsible. When, in the progress of time and a fuller understanding of this problem much of the restrictive legislation of the present day shall have been outgrown and abandoned the future historian will point to the Armstrong legislation chiefly as the first conscious attempt to control insurance companies through responsible self-government.

Second, such regulation depends upon intelligent action by the policyholders and such action is possible only when based upon full and accurate knowledge of facts and conditions. Its success necessitates a system of adequate publicity both as to financial conditions and as to methods of operation. Publicity is also the most powerful deterrent to fraudulent and selfish management known to political science. Says Commissioner Garfield in his last report:

"A most striking and important result immediately followed the investigation of the Bureau—the railroads cancelled substantially the secret rates, illegal or improper discriminations, and in many cases the discrimination in open rates. Thus a widespread system of railway discrimination was wiped out of existence because of the discovery of the agents of the Bureau, and before any prosecutions were brought thereon. The shippers of oil advise the Bureau that for the first time in many years they are now rapidly obtaining equality of treatment from the transportation companies." [6]

The various investigations into the insurance companies'

[6] Annual Report of the Commissioner of Corporations, 1906, pp. 4-5.

management will undoubtedly prove more valuable for the publicity given to their affairs than from their influence on legislation.

Two methods of securing publicity are practicable:

1. Through government investigations and examinations; and

2. Through independent audits by professional accountants.

The former is the method generally employed in this country, Germany, France and Switzerland. The latter is confined chiefly to England, and there has proved a most valuable aid to the government and to the policyholder. As is well-known, the regulation of insurance companies in England is entrusted to the Board of Trade, which relies chiefly, not upon examinations by government officials, but upon the report of the companies regularly audited by public accountants.[7] It is perhaps more to the credit of the effectiveness of the independent audit than to any other regulative device that we may attribute the high standing of the English insurance companies. Public attention has been repeatedly called to the desirability of uniform accounting and the independent audit by public accountants appointed by and in the interests of the policyholders, by the American Association of Public Accountants on several occasions [8] and lately by the Massachusetts Commission on Insurance Law. The report of the latter says:

"The recent investigations in New York have revealed, among other evils, two serious defects in the internal and external regulation of insurance companies: namely, an unscientific and inefficient system of internal accounting, bookkeeping and auditing, and a superficial and inadequate examination of the companies by the insurance department of that State. As a result the officers of the companies have wasted funds by unauthorized, illegal and improper expenditures; misleading financial statements have been made to insurance department, policyholders and the public

[7] "On the Province of State Supervision of Life Insurance Companies," by James Chisholm, Fourth International Congress of Actuaries, Vol. I, p. 1006 *et seq.*

[8] Journal of Accountancy, April, 1906, p. 525; August, 1906, pp. 290, 297; November, 1906, p. 74.

and the majority of directors and trustees have been kept in ignorance of many doubtful and irregular transactions."

The committee, therefore, advocates the passage of an act compelling companies to adopt a uniform system of accounting and to submit to independent auditing by certified public accountants and concludes:

"If the system proposed had been established in New York several years ago many of the familiar evils of the past two years would have been averted. It would have been impossible, under such a system, for the officers of the greater companies to have concealed their transactions from the policyholders or the insurance departments."

Third, in centralized governments the question as to whether the local or the federal government is best fitted to exercise efficient control over insurance companies does not arise. In England, France, Italy, Russia, Sweden, Belgium, and other states of this form, insurance is naturally regulated by the general government. In federal governments this problem may under certain conditions assume proportions that entirely overshadow all others. Theoretically the solution is simple enough. All economic activities that are entirely local are properly regulated by the local government. All economic activities that are interstate, are properly regulated by the federal government. Such is the distribution of functions in regard to the regulation of insurance in Germany, Switzerland, Canada and Australia. Such is the distribution of functions in regard to commerce and transportation in the United States. With respect to insurance the United States has clung to a method all other federal governments have discarded and which she too has abandoned for all other similarly organized economic institutions. The reasons for this anomalous situation are not far to seek:

(1) Insurance is a modern institution. When the federal constitution was adopted insurance so far as it existed was entirely local in character. As the insurance business developed and companies were instituted their regulation was

assumed by the state governments without any direct consideration of either its advantages or disadvantages;

(2) The transference of the control of the insurance companies from the states to the federal government under the authority granted congress by the commerce clause would be attended with far-reaching legal and economic consequences. This follows from the doctrine that a state has no power to impose restrictions on commerce among the states even in the absence of federal legislation,[9] except such as may be necessary for the enforcement of its police regulations. Consequently insurance officials would be forever protected on account of past offences from either criminal prosecutions or civil suits brought under laws of other states. And further, all rights of the policyholders under the statutes of other states would be invalid.[10] And

(3) The state governments naturally enough object to loss of power and lessened patronage.

The present method of regulation has, however, become well-nigh intolerable. The companies have been subject neither to effective self-government nor to wise public control. Irresponsible management on the one hand, fifty self-seeking state jurisdictions with conflicting statutes, retaliatory measures, "hold-up" acts, fake examinations, and unequal if not exorbitant taxation on the other, until insurance in some of its forms has become unduly expensive and often more risky than the hazards which it is its function to alleviate. Why, it may be asked in all seriousness, with fifty states and territories constantly at work, grinding out statutes, and fifty insurance departments continually examining companies and issuing voluminous reports, why has our insurance history been disgraced by one period of widespread bankruptcy, and now by another of extravagant and fraudulent business management. Is it lack of authority? In the words of the Armstrong report:

"This condition has not resulted, as has been stated, from lack

[9] Welton *vs.* Missouri, 91 U. S. Reports, 275.

[10] Unpublished address, Prof. F. Green, Urbana, Ill.

of legal authority either to inquire into the irregularities now exposed or to compel reports which would have exposed them. No substantial amplification of the powers or authority of the department seems necessary." [11]

The failure of the present system is due chiefly to the fact that it fails to recognize the essential principles that apply to the regulation of insurance companies.

(1) The government authorities controlling any economic organization should include within its geographical limits the constituent economic society thus regulated.

(2) The insurance company is an indivisible and inviolable organism [12] and, therefore, must of necessity be regulated as a unit.

(3) The several states are primarily interested in the operations of the interstate insurance companies only so far as they affect the citizens of that state.

State regulation is therefore destined to fail. For if the several states attempt to regulate all the companies operating within their borders as organic units, fifty statutes relating to the method of organization result. Unless such legislation is uniform each insurance company will find itself compelled to withdraw from all states whose legislation is not in harmony with that in which it has its charter. Again, if the states attempt to regulate the companies only so far as their operations within their geographical borders are concerned, no sufficient safeguard against a contaminated business management, the fruitful soil of most of the evils that arise within its own domain, is provided.

As the failure of state regulation has become more and more apparent and as the fundamental reasons therefore have been gradually appreciated, a growing and persistent demand for federal regulation has developed. The strength and vitality of this demand is indicated by the following phenomena:

1. The replies to the letter sent out by Senator Dryden to

[11] Report of Armstrong Committee, Vol. X, p. 360.

[12] *Cf.* papers by Adan and Le Jeune, Third International Congress of Actuaries, London, 1900.

some eight thousand associations and individuals throughout the United States in September, 1905, asking for an expression of opinion on the suggestion of President Roosevelt that interstate insurance companies be regulated and brought under federal control showed that 83.3% of those answering were in its favor; [13]

2. The work of the National Association of Insurance Commissioners, a body that has accomplished more than any one other single agency for uniformity of state legislation and administration is in itself a tacit admission of the desirability of uniformity, a condition whch only federal regulation can successfully accomplish;

3. The agitation in the present congress in behalf of the Ames bill is based upon and supported by the same demand; and,

4. The organization of the life-insurance companies into a permanent association, as proposed by President Morton of the Equitable in a circular letter of December 3, 1906, which has recently been perfected and is to-day in session in New York is in answer to the demand for uniformity of laws, governing the regulation of insurance companies.

None of these organizations for securing uniform statutes seem likely to accomplish the desired end. The National Association of State Insurance Commissioners has been at work for 37 years and the task before it grows larger and more hopeless. The " model " act for the District of Columbia has received the approval of many of the leading authorities on this question and yet when one stops to consider that this same act was devised " to get around the inability of congress to legislate " under the commerce clause of the constitution, and further, that the present statutes governing the insurance business in the District of Columbia enacted as recently as 1901, to use the exact words of the Commissioner Insurance for the District, " are the worst in existence " [14] one may well stop to

[13] " The Commercial Aspects of Federal Regulation of Insurance," by John F. Dryden, p. 17.

[14] Hearing before the Committee on the Judiciary in Relation to Insurance, Wash., 1906, p. 140.

inquire whether the leopard is to change his spots or whether we may yet find that figs are to be gathered of thistles.

Of the two methods by which direct federal regulation may be secured that by the amendment to the national constitution is far preferable from every standpoint except that of practicability. For it would effect no change in a legal status of either officers or policyholders and again, it would avoid a long period of litigation and judicial decision in the courts. It would seem from past experience, however, that only in case of a great popular uprising is it possible to change our fundamental law. Such being the case, is it possible to secure federal regulation by act of congress?

Agitation for such regulation began in 1865 as a direct outgrowth of the passage of the national banking act of the preceding year. A memorial was presented to congress asking relief from the burdens of state supervision. The first bill actually introduced was in the year 1868 following the lines marked out by this memorial. In 1877 as a direct outgrowth of the insurance bankruptcies of 1874 a second attempt was made, but without result. The Patterson bill of 1892, the Platt bill in 1897, and the Dryden bill in 1906 have followed in succession. The political, economic, and social difficulties in the path of federal regulation by acts of congress have already been indicated. In addition to these, however, there is a constitutional question involved which political scientists may consider and constitutional lawyers argue, but only the Supreme Court may finally decide. The question is, Has congress authority under the clause granting it power over commerce among the several states to regulate interstate insurance companies? The Supreme Court in a series of decisions, Paul vs. Virginia (8 Wall. 168) 1868, Hooper vs. California (155 U. S. 648) 1894, N. Y. Life Insurance Co. vs. Cravens (178 vs. 389) 1899, and Nutting vs. Massachusetts, 183 vs. 553, 1901, has definitely stated that "issuing a policy of insurance is not a transaction of commerce" and "these contracts are not articles of commerce in any proper meaning of the word." The court also went so far as to declare in Paul vs. Virginia that "such contracts are not interstate trans-

actions, though the parties may be domiciled in different states" on the ground that the contract was not completed until the policy was delivered in the state where the insured lived.

Notwithstanding the decision of the court, in these and other cases, a considerable number of men whose opinions are eminently worthy of respect believe that federal regulation through this method is the only practicable one and that it is worth while to test the constitutionality of such an act. They look for a favorable decision on the following grounds:

1. In all the cases above referred to the issue was brought under a state statute. In none of them was the validity of an act of congress called in question. In none of them did the decision hinge upon the constitutional classification of the business of insurance; [15]

2. The Supreme Court has shown a tendency in some of the more recent cases to adopt a more liberal interpretation of the meaning of the commerce clause. In the lottery case [16] it was held by a majority of the court on the construction of a federal statute that the transportation of lottery tickets by express involved interstate commerce, and it was therefore a valid act. Further, the clause is to be interpreted in the light of present conditions and consequently in the words of Justice Brewer "it operates to-day upon modes of interstate commerce unknown to the fathers, and it will operate with equal force upon any new modes of such commerce which the future may develop." [17] If, therefore, the transportation of lottery tickets from state to state is interstate commerce and the word "commence" is to be interpreted in terms of its present-day meaning, is it not to be concluded that insurance may yet be held by the court to be a part of or at least involve commerce?

3. Again, it is evident from the language used that the

[15] Majority Report of the Committee on Insurance Law, Am. Bar Association, Aug. 24, 1905.

[16] 188 U. S., 321.

[17] In re Debs, 158 U. S., 591.

court had in mind the transaction by which the contract between the company and the insured was completed. That is, the delivery of the policy to the policyholder by the company's resident agent. Such a transaction is evidently not commerce in its ordinary meaning of the word. This act, however, while an important part of the work of the company, from the legal point of view, is of minor importance from the economic standpoint. A more complete analysis discloses that the insurance company is engaged in creating time utilities and selling the commodities by which such utilities are for the time being represented to those who are in need of them. A simple case will illustrate: An insurance company for and in consideration of the sum of $432 or thereabouts, will sell to a man of 35 years of age, in good health, $1000 in gold or other lawful money, payable upon proof of his death. Here is a purchase and a sale, the essential element of trade or commerce. That the trade is in terms of gold or other lawful money does not prevent it from being commerce, otherwise those who buy and sell gold and gold coin must be excluded from that field of economic activity. Neither is it an essential condition of commerce that the commodities be "subjects of trade and barter offered in the market" that is, bought for the purpose of selling again for the sake of a profit. Such a limitation of the term would exclude the farmer who sells eggs direct to his city customer from partaking in commerce, while admitting the retailer who buys to sell again. Under this construction a retail clothing store would not be engaged in commerce when selling articles of clothing of its own manufacture to the individual who is to wear them, but would be so engaged when selling clothing made by the regular manufacturers of clothing. Commerce refers to an especial kind of business transaction, that is, the process by which titles to commodities and other economic utilities are transferred. The banker who buys and sells commercial paper is engaged in commerce, so is the broker when buying and selling securities, so is the real-estate agent when buying or selling land; so is the manufacturer who sells his own goods; and so is the insurance company when selling insurance. The term insurance

has at least three meanings as ordinarily used: (1) as a legal term it refers to the formation and character of the contract between the parties; (2) as a commercial term it refers to the process by which the relations between the parties are established; and (3) as an economic term it refers to the effect of the institution upon the distribution of wealth. The courts have confined their attention chiefly to the first meaning and have failed to appreciate the importance of the second. From the standpoint of the company the commercial process of selling insurance is second in importance only to the actuarial basis upon which its security rests. There can be little doubt that when the Supreme Court is obliged to pass upon the constitutionality of an act of congress which declares that interstate insurance business is interstate commerce, and that policies are articles of commerce and instrumentalities thereof,[18] it will consider from every point of view the terms commerce and insurance, and when it does so it will be obliged to recognize the fact that insurance involves commercial transactions if, indeed, it is not predominantly an integral part of commerce itself.

4. Certain other considerations are entitled to a hearing. James Wilson speaks of "bills of exchange, policies of insurance and *other* mercantile transactions;"[19] Hamilton in his opinion upon the constitutionality of the proposed United States Bank objected to the enumeration of the powers of congress as stated by the Attorney General, on the ground that among other powers he had failed to include "the regulation of policies of insurance."[20] Furthermore, insurance law had its origin in and is generally treated as an integral part of the law merchant or commercial law; and again, the regulation of insurance is in the most advanced commercial countries administered as a part of the department of commerce.

Fourth. When a responsible government has been provided for our various insurance companies, ensuring an administra-

[18] Dryden Bill, Sec. 16.

[19] Wilson's Works, I, p. 335.

[20] Hamilton's Work, Lodge's ed., III, p. 203.

tion at once representative and efficient, when an adequate system of publicity has been established through which the policyholders and the administration are kept in vital touch, when, further, the government which regulates is in economic harmony with the insurance institutions which it controls, then, and not till then, will it be possible to abandon the policy of restrictive legislation, which has been at once the necessary concomitant and the vital weakness of state regulation.

SOME OBSERVATIONS CONCERNING THE PRINCIPLES WHICH SHOULD GOVERN THE REGULATION OF LIFE INSURANCE COMPANIES.

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To the individual physical life there is no end more certain than death, and in turn nothing more uncertain than when that end may be reached. In a group of lives sufficiently large for the fair operation of the laws of average, it will be found, however, that, while no intelligent or safe prediction may be made concerning the length of any individual life, it can readily be told how many of the group will die each year. In other words, it will be found that there is a *law of mortality,* whose operations are so exact that, while they are subject to slight fluctuation from year to year, it is possible to predict in advance with practical certainty what will be the average lifetime of the group and the rate at which the lives will fail.

As with the advance of civilization the life of the individual became more complex, and his responsibility to those around him more marked, with an increasing necessity of adequately equipping dependents if they were to conquer in the struggles of life, men, subject to the same hazards and facing all an ultimate event, the only uncertainty affecting which was the moment of its occurrence, combined together for mutual protection, that from a fund created by the contributions of the many provision might be made for those dependent upon the few lives (their individual identity not known) which experience indicated might be expected to fail year by year. The principle underlying this form of co-operation was *indemnity*—to indemnify the families of those overtaken by death for the loss of a productive life, a life of money value to them. It may be said in passing, as applicable to all forms of insurance, that its sole legitimate purpose is to furnish protection against

some hazard, through the promise of indemnity—the promise to make good any loss which may occur upon the happening of the contingency insured against; as in fire insurance, the loss of one's house; in marine insurance, the loss of one's ship or goods; in life insurance, the loss, to those dependents to whom the benefit is payable, of the value of one's life. This principle underlies all insurance, that it furnishes indemnity (not profit)—the making good, in a measure at least, for a loss which has occurred. To make use of insurance for other ends is violative of its true principles and purposes.

When men entered upon the task of providing indemnity for the families of those who should die, by distributing the loss among those who survived, they necessarily, as the business, from its character, could not be carried on by a single person, but only by the co-operation of many individuals, formed associations or companies to provide the machinery through which the cost might be collected and the indemnity paid.

It was in 1762 that the first society to insure people for the whole of life and promising a determinate sum in return for a fixed premium was chartered in Great Britain, and now, as then, the business is conducted by associations, societies or companies chartered by the Government and possessing only such privileges, rights and powers as have been granted them by the people. It has been said that the one proper purpose of government is to keep the peace and do only those things which are essential to that end, and that legislation founded on any other principle is unsound. Those who hold this view have failed, it seems to me, to appreciate the real significance of the increasing complexity of our modern business life, and to differentiate between the control Government should exercise over individuals and the regulation to which it should subject its corporate citizens, chartered as they are by the State's authority, endowed with great powers and privileges which do not pertain to the individual, seeking to exchange their securities for the savings of the people, or to grant their facilities to those who are willing and able to pay for the service they may render. Creatures of the people, the State surely has the power to regulate their transactions for the pro-

tection of its citizens. Even though one bear in mind the rule laid down by the United States Supreme Court in the oft-quoted Dartmouth College case, the State clearly has the right to regulate the conduct of its corporate creatures, to such an extent at least as its restrictions are regulative and supervisory and do not extend to a denial to the corporations of the right to exercise their essential functions. Particularly is this necessary of insurance companies, since the growth of the business has been such that their operations now touch the interests of almost every family, and are of vital importance to the individual, the community and the State.

An insurance company, whether it be a stock corporation, the ownership of which is definitely vested in individuals, or a mutual company, conducted for the benefit of the policyholders alone by officers and trustees dependent upon the confidence and goodwill of the members for a continuance of their trusteeship, *is conducted by a few individuals* for the benefit of the large number of persons comprising the general membership. It might be said that a stock company is conducted, not for the members, but for its stockholders, yet this is true in only a very limited sense. Irrespective of the form of control, whether mutual or stock, and the slight tax put upon the earnings for the stockholders if it be a proprietary institution, the business of life insurance is essentially mutual in its character. Its conduct is possible only because men join together—co-operate—to form an alliance against misfortune. Subject to mutual hazards, with similar interests to protect, men in life insurance mutually share the cost of furnishing protection to all, and indemnity, as it may be needed, to the dependents of each. In its essence the business is based on co-operation for a given purpose and mutuality in sharing the cost and the benefits, irrespective of whether it is conducted by the members, or by shareholders who possess a proprietary interest. The company is created, built up, maintained and enabled to fulfil its purpose of indemnifying the families of those of its members who die, solely because a large number of persons, in advance of any benefit paid, entrust the substantial sums represented by their premium payments to the small group who

are actually charged with the administration of the company. The State gives to the managers of a life company great and unusual privileges, including the right to solicit and receive from countless thousands of its citizens payments made in advance for a benefit contracted to be paid after the purchaser is dead. These payments amount, in many companies, to millions of dollars per annum; in some companies to tens of millions per annum; and, generally speaking, the disbursements from the vast funds thus created are to women and children, just deprived of their natural protector, inexperienced, helpless, afflicted. There is no higher form of trusteeship than that which a life-insurance company undertakes, and it is right that the trustees of such enormous funds, contributed by so many different individuals from all sections, should be held to a strict responsibility by the Government which has authorized the inception and development of the business. The object and purpose of this regulation is obviously that Government should protect such of its citizens as are policyholders by seeing to it that the insurance companies soliciting their patronage and contributions are maintained in a healthy financial condition; that they are honestly and prudently conducted, and that the funds collected from the people are applied solely to the purpose for which contributed. The only object which justifies the State in regulating the operations of its life companies, is the safeguarding of the interests of its citizens insured. The Government, the creator of corporations, possessing and exercising the right and the power to regulate their operations, we may properly discuss the history of governmental regulation of insurance in dealing with the principles upon which that regulation should be founded.

The History of Regulation.

GREAT BRITAIN.

England is the home of the world's first regular life companies; it is the domicile of more well-established offices than are to-day transacting business in the United States; the majority of its companies were organized and had been doing business for many years before insurance became general in

this country. Of eighty life offices now doing an active business in England, fifty-three of the number were organized more than half a century ago, and seven of them more than one hundred years ago. The business there, during all the period of its rapid growth here, has been conservatively and economically conducted, with complete freedom from scandal and without any such instances of infidelity to the interests of the policyholders as have been disclosed on this side. It is true that conditions have differed. The business in England has been of gradual and steady growth among a conservative people. Here — particularly in the last quarter-century — its development has been so great that we can scarcely comprehend what the figures mean when we recite the amount of assurance now outstanding. There the business has slowly developed in an ancient nation; here it has more than kept pace with the rise of a new nation abounding with natural resources and wealth, its people noted for the freedom of their expenditures and for the ample provision they seek to make for their families. That the great spread of the life-assurance idea in America should have led to conditions different from those existing in a land where its growth has been more gradual, is not a matter of surprise. But the character of the business of the British offices, which now have in force over a billion pounds of outstanding assurance, protected by assets valued at more than three hundred million pounds, and which has been so generally conducted with a singular devotion to the interests of the policyholders, leads us to inquire what part governmental regulation has played there in fostering the development of the business through the protection of the interests of the insured.

The answer to the inquiry is a short one. In Great Britain a charter for a life company can be procured without too great difficulty; no permanent deposit is required to be made with the Government; there is no statutory standard of solvency to be observed; there is not imposed on the companies the use of any given table of mortality or rate of interest; there is no department of government charged with the supervision of assurance companies, or authorized to examine them; and, in

fact, there is *complete freedom from governmental control of the details of the business*, the sole requirement being that each company shall, once in five years, file a valuation and detailed report of its business with the Board of Trade. This is published in the Blue Book; and in making its valuation, each company has to declare the basis upon which it figures its reserves—the mortality table and rate of interest used—and make an exhibit of its financial condition accordingly. In other words, the English Government relies solely for the proper regulation of its life-assurance companies upon *publicity*, and the force of a competition which, both following and anticipating publicity, leads to a healthy rivalry to see which company can show the best returns to policyholders. Doubtless also reliance is placed upon the integrity and fidelity to their stewardship of the managers of the companies, a reliance justified not only in England by the sound management of the companies and the fair dealing which has characterized their relations with their members, but as well in the United States by an honest, prudent and faithful administration of the funds and affairs of the great majority of our companies which has been but emphasized by the disclosure of different ideals of management in a few conspicuous instances.

The statutory provisions covering the operations of life-assurance companies in Great Britain, since the adoption of which they have been particularly free from cause for criticism, are embodied in the "Life Assurance Companies' Act, 1870." The framers of the Act aimed at allowing the companies full freedom in their conduct of the business, while compelling them to make public the result of their operations, *believing publicity would do more to secure sound management than any other method which might be adopted.* The provisions of the Act were wisely founded on the preservation of corporate initiative and scope of administration adapted to the circumstances of each company, while demanding the publication in systematic form of the methods adopted and the results achieved. It encourages both freedom of enterprise and publicity of record, such publicity enabling the public to withdraw its confidence and refrain from membership if the

official returns disclose reason therefor. As an English authority has well said:

"The authors of that Act displayed a sound and sagacious judgment and appreciation of the true basis of British commercial enterprise when they scrupulously adhered to the maintenance of *corporate liberty of organization and method* with the public declaration of such prominent details as would enable an opinion to be formed upon the practical wisdom and judiciousness of administration."

Thus regulation in Great Britain has taken the form of requiring publicity only, leaving the trustees free to conduct the details of the business as they will, so long as they do it in the open; and leaving the public, unguided by any government certificate of solvency or character whether of great or little value, charged with the responsibility of protecting its own interests through inquiry, through judgment based on the published reports and the exercise of an intelligent discrimination and selection. The public has protected itself far better under this system than the State can protect its citizens through paternalistic methods.

THE UNITED STATES

Governmental regulation in the United States has taken a very different form, and the situation has been rendered much more complex owing to the fact that the Federal Government has never exercised jurisdiction over interstate insurance transactions (not regarding them as falling within the constitutional definition of interstate commerce), and has left the individual States to control the operations, not only of their own companies, but of all the companies doing business within their borders. As most of the well-established companies do business in practically all the States, and as a corporation of one State lacks any inherent right to transact business within the other States, but can enter them only as a matter of favor and grace upon complying with such requirements as to admission as may be exacted, it follows that our companies are subject to and must, to do business throughout the United States, be

governed by the regulations of fifty different State and Territorial Governments, whose rules of control and of taxation are by no means uniform.

Then, on the whole, a line of regulation quite dissimilar to that followed in England has been adopted in America. The States have established statutory standards of solvency, requiring that the assets of a life company should at all times at least equal the net value of its outstanding policies (such net value being the difference, according to the stated Table of Mortality, between the aggregate net single premiums for the sums insured at the then ages of the insured and the present value of all net premiums therafter receivable on the policies outstanding, in accordance with the same Table of Mortality). This standard of solvency has possessed no magic to keep any company from actual insolvency, and in conspicuous instances has served as a hard-and-fast rule to destroy organizations whose so-called "legal reserves" were temporarily impaired, yet which were not only able to meet all current liabilities, but were in such a condition that, treated by a more flexible rule, their reserves could have been restored and the companies maintained as going institutions—to the great benefit of their policyholders, whose insurance was in fact destroyed through unnecessarily enforced liquidation.

The adoption of a statutory standard of solvency has been accompanied in most States by the creation of an Insurance Department—a bureau of Government charged with the duty of supervising the operations of all insurance companies operating in the State, and armed by law with the power to make an examination at will of the affairs of any company doing business within its borders. The next step toward State regulation of insurance has been the appointment as head of the Insurance Department, not of some man capable, owing to familiarity with the business, of really conserving the interests of the policyholders through an intelligent supervision, but usually of some politician or party worker, to whom the "job," with its salary, is given as a reward for "loyalty to the organization."

The result of this mode of selecting men for the office of

Commissioner of Insurance has, in most instances, been a mere perfunctory performance of its duties. The power to examine companies has been abused rather than used. When the examinations were made in good faith, they were directed chiefly to a verification of the company's last annual statement, and did not go into the question of character of management. Though directed to the ascertainment of solvency alone, the report frequently, in terms, was a certificate of good management. The effect of such reports was to lull the public, through dependence upon official indorsements, into a sense of security. Thus, to an extent, State guardianship has been allowed to usurp the place of responsibility and control by the parties actually interested. Such guardianship, largely ineffective, injures rather than benefits the policyholders, for, relying upon it, the members do not investigate and study the operations of their companies. They accept the license or report issued by the State as a certificate of character, leave it to the State to do their thinking for them, and as a result lose the advantage of actual knowledge and the intelligent discrimination which follows it. The method is injurious to the real interests of the citizen, which is always the case when governments attemtps to do for an individual what that individual should do for himself.

The power to examine, moreover, has on many occasions been used by unscrupulous officials " for purposes of revenue only," and the instances are well known where officials of distant States have visited cities where were located many companies, both life and fire, and made a pretence of " verifying the last annual statement" for "the protection of policyholders residing in our State." These " verifications " were of a most casual nature; half a dozen of such so-called examinations were often conducted concurrently, the representative of the distant State spending a few hours only in each office. The expense of these examinations was of course collected from the companies, and was usually regarded as an individual perquisite by the examiner or the Commissioner he represented. It consisted of a very liberal per-diem for the examiner and his assistant, their hotel bills, and mileage from the distant State to the place of examination.

The mileage and hotel bills were, with the charges for "services," presented to *each* of the companies "examined" on such a trip (even though the expense was actually only incurred once), and any question concerning the payment of the bill was met by an immediate threat to revoke the company's license in the given State. This was State "supervision" at its worst, and it may be said, for the credit of the States, that this particular form of "regulation" is less heard of now than it was a few years ago. It is significant, however, taking supervision at its best in the United States, that the statutory standard of solvency has been "useful" chiefly in forcing into liquidation companies intrinsically solvent; that State supervisors have given the public no protection or warning against companies actually being mismanaged—and that the various States and their officials, with the power at hand for years past to thoroughly examine any company doing business within its borders, never in any way discovered or warned the public against the evils which were recently laid bare in an examination conducted by a Legislative committee.

The expense of the maintenance of all these numerous State Insurance Departments and of the examinations which they make is collected from the policyholders, through a direct charge on the companies in some instances for the expense of the investigations, and otherwise through taxation. There are Insurance Departments in a considerable number of States which are efficiently conducted, and which render some real service to the policyholders; yet, taking State supervision on the whole, as it has existed in the United States, has the protection afforded the policyholders through it been worth what it has cost them? Has it been justified by the results? Another answers:

"Have failures been prevented and losses avoided? Has it been impossible for fraudulent assessmentism to flourish and count its deluded and disappointed victims by the millions? Has not the State invariably yielded to the clamor of promoters and their expectant victims, and put its broad seal of approval upon impossible schemes of insurance, inevitably certain to bring dis-

aster? Has it prevented the misapplication of trust funds and their diversion from those to whom they belonged? Has it promoted equity, scowled on discriminations, rebuked extravagance, condemned nepotism, and denounced self-adjusted salaries? Has speculation in trust funds been prevented? We know the things existed in some companies, and we place the responsibility for them *squarely upon the State, where it belongs*, since the State has undertaken a guardianship which I will not say it could not better perform, but which will never be adequately performed *until those interested perform it for themselves.*"

Like the poor, however, State supervision will doubtless always be with us, and the most that can be expected is that the Insurance Departments of all the States will emulate the example of those most efficiently conducted to-day, and that, out of the present confusion of statutory and departmental regulations (varying as they do in the different States) may come a degree of uniformity, followed by a co-operation between the States, so that one may not duplicate the work of another, as in examinations, etc., except for some special and controlling reason. It is also to be hoped that state insurance officials will confine their activities to their proper province of seeing that the companies obey the laws and so openly conduct their business with an efficient accounting to the policyholders that the public can intelligently protect its own interests; and not attempt, as has been done in some cases, to interfere with company managements and dictate how the details of the business should be conducted.

The Effect of Publicity.

With this review of the object and history of regulation, it may be pointed out that heretofore no efficient publicity or actual accountability for surplus funds has been required in the United States. There have, it is true, been many of our old companies which have voluntarily made annual accountings to their policyholders, and concerning whose management there has not—shall we say as a consequence?—been any substantial criticism uttered. Yet, in the past, the companies prudently, conservatively and honestly managed, have not done as much

business as other companies which refrained from annual accountings to their members, and in whose conduct extravagant and improper methods of management have been recently disclosed. In fact, the companies which were actually doing least for the individual policyholders were most largely receiving the patronage of the public. The reason for this is that the poorly managed companies have been able to conceal the fact through lack of publicity and accountability, and through extravagant expenditures thus concealed have been given an advantage in the hiring and compensation of agents. With annual accountability enforced of all companies, the results in each, as to cost and surplus earnings, would be clearly known to every individual who cared to inquire. In no business is there sharper competition than in life insurance, and with publicity and accountability enforced the law of self-preservation would require every carelessly managed company to mend its ways, for failing to do so its results would fall below those of its rivals, and it would lose the confidence and patronage of the people, who, with publication of methods and results required, will never be as blind about insurance matters hereafter as in the past. Fostered by publicity and annual accountings, competition in life insurance will no longer be directed toward size or rapid growth, but there will certainly be a *competition in economy,* to see which company can give insurance at the lowest cost to the policyholders: and under such competition there would, through the outworking of a natural law, be a reduction of expenses to as low a point as efficiency and experience would warrant, without the damage which may follow an attempt on the part of the State to interfere with freedom of management in its details.

Principles of Control.

Consequently we hold *that the fundamental principle upon which all sound governmental regulation of life-insurance companies should be based is the requirement of complete publicity concerning their operations, accompanied by a detailed and frequent accountability for all surplus and other funds.*

Let the State require of all life-insurance companies the

utmost publicity concerning their management; let it insist upon all their transactions being carried out in the light of day; let it demand of the trustees a regular and public accounting for the funds entrusted to their care, and you then enable the policyholders to readily ascertain whether their company is being properly conducted, and to protect their own interests accordingly.

Last year a legislative investigation of a few great American companies disclosed the fact (scarcely a matter of wonder in view of the period of growth and expansion through which their business had recently passed) that there had been in such companies extravagance, improper expenditures and other evils embodying a disregard of a faithful trusteeship. All join in condemning the evils disclosed, and among insurance men and citizens generally there is no dispute as to the general facts nor as to the necessity of making their repetition impossible. But what is the sound method of insuring such reform?

We certainly should not, by complex regulations affecting many features and details of a situation, seek to do that which can be accomplished more easily and with equal certainty by a few simple fundamental requirements.

What is necessary for thoroughgoing insurance reform is a maximum of publicity, strict accountability and a minimum of legislation.

The Test of Recent Legislation.

If we refer to the statutory enactments following the recent investigation we may see to what extent the laws passed depart from or run counter to sound principle. The investigation disclosed evils—evils which had arisen in a period of forced growth, whose disclosure shocked all men. Their occurrence was to a large extent possible only because of a lack of publicity concerning, and accountability for, the surplus funds arising under policies on which the dividends were deferred for long periods of years. The lawmakers, if we can judge from the laws adopted, seemed unconscious of the truth that the mere disclosure of the facts and the deeper sense

of trusteeship which such disclosure enforced, together with a consequently more intelligent attitude toward the subject by the public, of themselves rendered a recurrence practically impossible. Evil cannot thrive in the broad light of day. The majority of citizens are honest, and a dishonest man or corporation cannot permanently retain the confidence or patronage of the public. That which must be done openly, under the scrutiny of all men, will, on the whole, be done fairly and honestly. As another, a most intelligent and faithful State Insurance Commissioner, has said:

"The great remedy for whatever evils have thus far been found in insurance, or whatever evils may be found in the business in the future, lies in *full and complete publicity*. I am clearly of the opinion that more actual good has been accomplished by the publicity incident to the Armstrong Committee investigation than will ever be accomplished by the Armstrong laws, so-called, and this observation is not meant to be in any sense a reflection upon the recent New York enactments. I simply desire to emphasize my belief in publicity rather than in wholesale legislation, designed to cover every detail, as the effective remedy for evils of whatever nature."

Deferred Dividends.

The evils which were discovered last year had been rendered possible chiefly through the abuse of the deferred dividend plan. The obvious remedy was to require publicity and strict annual accountability under such contracts in the future. The practice of deferring the distribution of dividends or bonuses has been in common use in England ever since the business was founded, with benefit rather than injury to the policyholders. It has, or it has not, an office to perform in connection with American life insurance. Lack of accountability under it here had given rise to extravagance and grave evils. If accountability had been imposed and the plan has a legitimate place in the business, it would have survived without injury to the public; if it could not survive under a compulsory accountability it would, and should, die a natural death. Sound legislation would have given protection against the abuse of

the plan, and left natural laws to determine the question of its survival. Was the action of the lawmakers guided by sound principles of publicity and accountability? Not at all. The deferred dividend contract was *prohibited by statute.* This prohibition renders it impossible to safely transact certain forms of substandard business, thus preventing a class of citizens most needing insurance from procuring it (though it is clearly in the interest of the State that they should be able, through insurance, to protect their dependents); and as indicated, the prohibition was wholly unnecessary. It was not the deferred dividend contract which caused the evils, but the abuse of it—and accountability would have cured the abuse.

Limitations of Expense.

The investigation disclosed evils of extravagance, both in general expenses and in agency expense. It was the abuse of the deferred dividend contract which alone rendered such extravagance possible. The cure, through publicity and accountability, of such abuse of deferred dividends, would also necessarily, almost automatically, have put a stop to undue expenditures, for with every company required to account to its policyholders annually, showing the surplus earned on each policy, a premium would have been put on economy, and all companies would be compelled to approximate the prudent and economical management of the most conservative, or would lose the confidence of the public through failure to give equally favorable results. Did the Legislature cure the evil by such fundamental requirements? On the contrary, it put on the statute books a limitation of the total amount any company might disburse for expenses per annum. Companies differ, among other things, in age, in size, in financial strength, in the character of the business they have in force, in standing, in reputation, in earning power, in the percentage which they have added to the net premium for expenses. The lawmakers ignored such considerations, and adopted a limitation of expenses which is applicable to all alike; which bears with unequal force upon different ones; which renders it impossible that new companies should be organized; and which throws

obstacles in the way of upbuilding into strong and useful institutions those smaller, younger or weaker companies now existing, whose preservation and growth the State is in reality especially interested in fostering.

There had been extravagance in the agency field. With publicity and accountability it could not exist. But was that the remedy applied? No; but for the first time in history there has been written on the statute books a law establishing for labor not a minimum but a maximum rate of compensation. The sufficiency of the provision does not for the moment enter into our argument, though it will be referred to later as indicating the practical, as well as the theoretical, objections to such laws. Sufficient or insufficient, the principle underlying such legislation is unsound. The trustees and officers of life-insurance companies are charged with the duty of conducting their business efficiently; a healthy growth and the steady introduction of a reasonable number of new lives (the effect of which is to reduce the death rate) is beneficial to the members, and lessens the cost of their insurance. Through the limitation first of agency expense and then of total expenses, the power and discretion of the officers are taken from them, and yet they are left with the responsibility. The State should either leave both the power to manage and the responsibility of management with the officers of the company, safeguarding the interests of the public through the requirement of adequate publicity and accountability, or, if it desires to exercise the power of controlling the details of the business, it should itself assume the responsibility as well.

To deal for a moment with the merits rather than the principles of such regulation, the provision made for agency expense is possibly sufficient for the great cities and for well-established companies in the thickly populated sections. Companies differ in very many respects, however; and what would be sufficient for a company of size and fine reputation, which has been doing business in a given territory for, say, half a century, which has thousands of satisfied policyholders therein, and which, accordingly, finds it comparatively easy to procure new business, may be wholly insufficient for a company

perhaps in every way just as good, which is new to that particular field, and lacks history or policyholders in that community. This is true of companies of equal merit but with different histories in the given field, and the inequality is more marked when we consider the case of the smaller, weaker or younger companies, which it should be the purpose of the State to preserve—not destroy.

Territories, as well as companies, differ; and a compensation which may be adequate in cities like New York or Chicago, where an agent has opportunity to write a great deal of business, may be wholly insufficient in the sparsely settled agricultural districts, where there is but a limited amount of business to be procured in any event, and where the agent must travel long distances, at much expense of both money and time, to get even that. It is, in fact, the general opinion of conservative insurance men, who are quite in sympathy with the demand for economy, that this measuring of all companies and all territories by the same yard-stick of expense, will result in the loss to the companies of some of their very best and most persistent business, namely, that arising from the agricultural communities, and in the loss to the State which must necessarily follow the failure of any class of its citizens to make provision for their dependents.

Surplus Funds.

Again, some of the companies, through the deferred dividend plan, had built up large surplus funds, for which they were not held to any strict account. Evil had followed, due to the absence of accountability, the enforcement of which would have cured it. The Legislature again ignores the obvious, and for the first time in history we find the State *legislating for instability.* The history of all regulation of fiduciary institutions shows government making provision to insure the absolute security and solvency of corporations receiving and contracting to safeguard the surplus earnings of the people. In recent legislation, however, we find one of our States, greatest in population and wealth if not in legislative wisdom, defining the maximum surplus or contingency

reserve which a company shall maintain. Never before has the State attempted to take all discretion from the managers of its corporate creatures and actually legislate for weakness and insecurity through a limitation of the amount of surplus funds which a company may accumulate. The evil arising from large surplus funds held free from accountability could have been promptly cured by fundamental legislation as already indicated, and by the adoption of a sound method of taxation; but the principles which should govern regulation seem to have been wholly ignored, and a "short cut" attempted which improperly impairs the discretion of managers and is an infringement upon the security of the policyholders. It is far more important that insurance should be absolutely secure than that the individual member should receive a dollar or two extra in dividends.

Thus, if we carefully study the principles upon which regulation should be founded, it would appear that the State, in recent legislation, had adopted a cumbersome, arbitrary, paternalistic and dangerous method of accomplishing needed reforms, which could better have been made effective by a few simple requirements directed at the fundamentals of publicity and accountability.

The lawmakers have seemingly overlooked the fact that integrity and fidelity to a trust can no more be created or guaranteed by statute than can the fidelity of the citizen to his marriage vow be enforced by legislative enactment. What is wanted is not more legislation, but more character; not statutory restriction, but a deepening of the sense of trusteeship and such a public operation of the affairs of the companies as will not only make evil or extravagance certain of detection, but will enable the individual citizen to judge more intelligently concerning the merits of the administration of his company. Soundness and integrity of management are not as apt to be insured by the creation of statutory misdemeanors as by requiring that all corporate acts shall be performed in public. It may well be repeated, as pointed out by the Lord Bishop of Birmingham in the Commemoration Sermon preached by him at Oxford University in June last

(in speaking of the laboring classes and their apparent belief that legislative enactments covering this point or that would better their condition), that what is needed in all the affairs of life is not so much new law, or more law, or the experiments of governmental control, as character—an intelligent application of right principles to all the relations of men. That legislation affecting insurance corporations will prove of the greatest value which most deepens the sense of responsibility on the part of corporate managers, and increases the intelligent discrimination exercised by the members or those contemplating membership. Men should be encouraged to think and act for themselves, and the State can aid in developing self-reliance on the part of its citizens by the requirement of such publicity concerning corporate operations as will give to any man who uses his intelligence the power of self-protection. The strength of the State is dependent upon the character of its citizens, and the community can only be injured, not helped, by government attempting to exercise on behalf of its people functions of judgment, or discrimination and of selection in the conduct of private affairs which the citizen can better employ himself, and the use of which would strengthen and improve him. Much of the mistaken interference of government with individual affairs springs from a disregard of the unquestioned truth that knowledge comes from experience and development through the exercise (not through the non-use) of one's faculties. The very spirit of our democratic institutions calls for the greatest possible freedom of action on the part of the people in private affairs, and through that freedom character is developed, both from the lessons of attainment and from those deeper lessons of apparent failure which in a democracy are so often but the foundation stones of ultimate achievement.

No observations concerning the regulation of life insurance could be complete without reference to the demand which is being made in some quarters for a standard policy, and without calling attention to the lack of principle upon which present methods of insurance taxation are based.

Standard Policy Forms.

There is no innovation in the line of insurance regulation more actively urged at the present moment by those lacking experience in conducting the business, and certainly no proposal for which less can be said, than the demand for standard forms of life policies. It is argued that as standard fire forms are required, the same rule should be applied to life companies. In the case of fire insurance, there are frequently many policies in force on the same risk; the loss incurred is almost always a partial, not a total, loss; the adjustment of all the policies is usually made at one and the same time by an adjuster representing all the companies, and the many questions arising concerning the distribution of partial losses, and the pro-rata payable by each of the several companies involved, have seemed to many States to justify the requirement of uniform policy provisions—so that the liability of each company may be defined by the same rule and clearly understood. In life insurance, however, there is nothing payable except in the event of a total loss (death), when the policy is paid in full; and each company adjusts its own claim independently of the others. There are no questions of partial loss or pro-rata liability to arise, and the reasons which are urged for standard fire forms are wholly inapplicable to life insurance. In addition, there is no evil needing correction which demands that the State should deny to its corporations and its citizens the free right of contract. Here and there a policy has, it is true, been misrepresented by irresponsible agents, whose employment was a natural consequence of the high-pressure methods lately in vogue, the misrepresentation usually taking the form of stating twenty-year deferred-dividend policies to be twenty-year endowment contracts. The requirement of accountability under deferred dividend policies, the abandonment of high pressure methods and the discontinuance of the system of advances to agents which would naturally follow such accountability, would speedily cure such slight evils as may have existed in the matter of misrepresenting the policies of any of the regular life-insurance companies. There is in reality no evil the cure of which would not be better

found in legislation directed at the fundamentals of publicity and accountability, rather than in the requirement of standard forms. It is significant that there is no demand from policyholders for any such "reform," the cry arising almost wholly from those who, having had no practical experience in the business and possessing no sound knowledge of its history or the principles and practices underlying its operation, have taken to themselves the duty of suggesting the passage of new insurance laws to legislators equally unfamiliar with the subject.

If those who urge the adoption of standard forms but had the opportunity afforded the practical insurance man of examining the policies issued by the American companies fifty years ago, forty, thirty, or even twenty years ago, and comparing them with those issued say ten or five years ago—or even of comparing the latter with those now offered, he would find that through the lessons taught company managers by experience, and through the force of a healthy competition, policy forms had become more and more liberal each year, had been framed to cover a constantly increasing number of benefits, had omitted restriction after restriction formerly enforced, until to-day, if the policy contracts of many of the companies are to be criticised at all, the criticism must be that they embody too great freedom from restriction, too much liberality, too substantial rewards for surrender, rather than that they fail in any way to give the policyholders full value for the premium paid. And the significant thing is that this history of improvement and increased liberality in policy forms has been *the voluntary act of the companies*, due to the guidance of experience and the force of a free competition uncontrolled by the State. Policies are constantly being redrawn and liberalized; the development in forms has kept pace with the increasing complexity of modern business conditions, and every need for protection that has arisen has been met by changes and improvements in the life-insurance contract. Not until the current year has any State sought to crystallize into exact language and put into inflexible form on the statute books policy forms which it says must be used by all its com-

panies. A form safely applicable to all companies, young and old, weak and strong, is necessarily less liberal than that which the older and stronger companies could issue: and, in fact, in the one State where the idea has been adopted, the standard form is inferior to and less advantageous to the policyholder than the more liberal and attractive policies now offered by many well-known and conservative companies. A statute attempting to establish in one given form of words a contract which should be flexible enough to cover every developing human need would most certainly put a stop to all improvement and progress. Policy forms are now far more liberal and more fully protect the insured than were those of but a few years ago. The limit of improvement has not been reached, and *unless the State forbids further growth by the adoption of a fixed form*, the prospect of now materially reducing expense accounts will lead many of the companies to further liberalize their policies. It is fair to point out that had the State adopted standard forms fifteen, or ten, or even five years ago, those who read these lines would not find themselves in the position of being able to secure policies so liberal and so fully protecting the rights of both insured and beneficiary, as those now freely and voluntarily offered by the companies themselves. To all who have understandingly reviewed the history of the development of policy forms in American life insurance, the proposition to now standardize policies will, we believe, be seen to have less to recommend it (which is saying a great deal) than any of the other "reforms" proposed.

Taxation.

Speaking broadly, the vast amount of insurance in force in our companies stands as a monument to the unselfishness of man, as an evidence of his forethought, his affection, and his realization of responsibility, for those dependent upon him. Death to the individual is an event so uncertain in the hour of its occurrence that through life insurance alone can material protection be certainly given to those who otherwise might be

unprovided-for. Insurance [1] is the most indispensable and the most beneficent institution of our day. It is a very practical and at the same time a most ingenious method of equalizing the hazards of life. To secure its protection men toil and deny themselves the full fruit of their labor; they give up, in some cases almost the necessities, in all cases some of the comforts or luxuries or pleasures of life, that those to come after them may be protected from adversity and want—that children may be educated and brought up to lives of usefulness. Founded on a care for the future of others, a care which can only be exercised by present denial and sacrifice, the determination to insure represents the best and most unselfish qualities of human nature. Insurance is thrift, nobler than other forms in that it is exercised not for self but for others, imposing a present burden for a fulfilment which death alone can bring. The cost of insurance is a tax with which man voluntarily charges himself so that he may make provision for his own and not leave his dependents to be cared for or educated by the State. Through the operation of the business of life insurance great burdens are removed from the State; widows are provided for, homes are maintained, children are educated to be useful citizens. No man can number those who, through the benefits of insurance, are saved from becoming public charges—kept from the poorhouses, the asylums and the orphanages. Through provision made for children, which keeps them from poverty and an environment of want and temptation, who can tell how many are trained to honorable, useful lives, and saved ultimately from the criminal population and the prisons? Clearly as men more and more make provision

[1] In speaking of insurance, the writer refers to the business in its pure and legitimate form, under which protection is secured for one's dependents, or provision made for one's own later years. During the past quarter century excrescences upon insurance contracts have led to the creation, retention and misuse by some companies of large surplus funds, which have been pointed to as justifying a demand for taxation. These phases of the business are speedily passing, and are ignored. The true character of life insurance, its pure practice which will be required under new systems of publicity and accountability, guided by a more intelligent public interest, are alone borne in mind in considering questions of regulation.

for their dependents through insurance, the direct burden of the State in caring for the aged, the indigent, the orphaned and the degenerate is lessened. All thrift is beneficial to the State, particularly that higher form which provides for the weak, the young and those unable to work. The government which fosters and encourages the spread of life insurance shows but an enlightened self-interest, and this fact has been behind much of the demand for governmental regulation and for a control which its authors have hoped would lower the cost of insurance protection, so that the public might be led to insure even more freely than at present.

Yet the State is directly responsible for a substantial addition to the cost of insurance to its citizens through methods of taxation which are unjustifiable and indefensible. When an insurance company is taxed, the extra expense which that tax involves is borne by the individual policyholders. This seems to have been overlooked in many States, which have sought to meet the expenses of conducting the Government through the taxation of life-insurance companies, blind to the fact that when they tax insurance, they are merely taxing their own citizens who are insured, levying a special impost on that portion of their people who are the most thrifty and unselfish, and who are thus penalized by the State for seeking, through voluntary provision for dependents, to relieve the community from the burden and expense of caring for those who otherwise might be left destitute. The careless man, irresponsible, selfish, who makes no provision for his family, escapes this form of taxation, which is thrown wholly on those who have already taxed themselves for the benefit of their dependents—and the State. The taxation of life insurance is essentially a tax upon a tax; it discourages the making of provision for dependents by adding to the cost; it penalizes the thrifty, and is nevertheless a most popular form of raising money, though clearly against public policy and the best interests of the people.

It may be said that the companies—*i. e.*, the policyholders—should, through taxation, meet the cost of State supervision, the maintenance of governmental insurance departments, etc. We might dwell on the fact that, inasmuch as insurance is

for the benefit of the State as a whole, the cost of supervision might properly be levied on *all* citizens, and not merely on those insured; but, waiving that, and admitting that the policy-holders should meet the cost of supervision, what do we find?

One who investigates the subject will discover that, with but few exceptions, each State imposes a direct tax upon the companies, in the form of a percentage of the premiums collected by them within its borders. In most instances this percentage is upon the gross premiums collected. Four States fix the tax at 1 per cent. of the premiums; four more at 1½ per cent.; sixteen collect 2 per cent.; one charges 2¼ per cent.; seven collect 2½ per cent., and one or two even exact 3 per cent. A few States impose no tax, and in several States the tax is based on reserves, on surplus or on the amount of business transacted. Then, in addition, many of the States have on their statute books a so-called retaliatory law, which has been well described as "a relic of barbarism," and which is the product of legislation founded on no principle which could be seriously discussed among thoughtful and civilized men. Retaliatory provisions operate in this manner. One State taxes insurance companies say 1 per cent. of the premiums collected therein; but it provides that if another State should tax at a higher rate companies of the first State, then the latter in turn will tax companies of the second State at the rate imposed on its own companies there. The theory on which these provisions were enacted evidently was that they would tend to reduce the taxes charged by other States. In this object they have failed, and the State which has thought that a tax of say 1 per cent. has been all that should properly or equitably be charged life companies, has found itself in the position of actually collecting a tax of say 2 per cent. or 2½ per cent., with no more justification than that it proposes to do a wrong within its own borders because some other State first sets it the example elsewhere. If sound principle were applied to insurance legislation and taxation in America, certainly every retaliatory law now in force would be repealed, and most tax laws modified.

A few instances alone will show that present insurance

taxes are not imposed merely to meet the necessary cost of supervision.

In 1905 the receipts and disbursements of the State Insurance Departments named below were as follows:

	Receipts.	*Disbursements.*	*Excess of Receipts over Disbursements.*
New York.....	$288,990.35	$152,814.99	$136,175.36
Wisconsin.....	572,778.95	19,717.92	553,061.03
Ohio.....	1,004,932.99	38,818.42	966,114.57
Michigan.....	445,818.49	14,034.32	431,785.17
Texas.....	329,992.00	16,019.00	313,973.00

These States have been taken at random as illustrating a situation which exists in practically all, namely, that government regards the business of life insurance as a proper source of revenue from which to provide for many of its general expenses. Such an attitude must necessarily be founded on a superficial comprehension of the importance of the business to the State and the benefit which through insurance accrues to its people. Take a State which levies a tax of 2½ or 3 per cent. on the gross premiums collected within its borders—it simply requires each of its citizens who desires one hundred dollars' worth of life insurance to pay $2.50 or $3.00 per annum for the privilege of being able to purchase it; it makes an arbitrary and substantial addition to the actual cost of insurance, and compels the company to collect it annually from the policyholder, on the State's account, something which the individual does not realize, as it appears simply as a part of the premium.

In 1905 the life-insurance companies doing business in New York State paid out for insurance taxes, licenses and fees almost seven and one-half million dollars.

Thus, while the State is constantly urging legislation designed to reduce the cost of insurance to the public, and so seemingly realizes the benefit which must come to its people as a whole through the extension of the life-insurance business, we find it with a strange inconsistency making a direct, unnecessary and unjustifiable addition to the cost of insurance, which, even should we deduct the cost of State supervision,

now amounts, in the case of merely that group of companies doing business in New York State, to over $7,000,000 *per annum*. The reduction in the cost of insurance to the policyholders, which the State could promptly effect through refraining from taxing this form of thrift, would amount to more than any economy in general expense which can possibly be enforced by statute. Freedom from taxation would bring about an immediate, certain and easily measured reduction in cost, without any possible injury to or interference with the business, while limitation of expenditures by legislation promises no certain result, and may even lead to an actual increase in cost, through an impairment of efficiency. If the normal growth of the insurance business be not checked by restrictive legislation, and if the rates of taxation remain as at present (they have been steadily increasing) the policyholders will in the next ten years pay the State governments more than *One Hundred Millions of Dollars* in taxes. It is not to be believed that people realize the addition Government is thus unnecessarily making to the cost of life insurance, or the extent to which the burden of taxation lessens the returns which could otherwise be expected under their policies. The sums now annually collected from the companies as taxes would, if applied to the purchase of insurance at the average rate of premium, pay for additional insurance for present policyholders and their beneficiaries to the amount of two hundred millions of dollars. The moment the public fully appreciates these facts we may expect a demand for a more intelligent and less burdensome system of insurance taxation.

I have said that any evils which have existed in the business have arisen from lack of publicity concerning, and accountability for, surplus funds. Fundamental legislation on this subject will render the recurrence of evil impossible; but if, as some allege, there be danger in the accumulation of large surplus funds, their maintenance at a reasonable figure and the prompt distribution of moneys accumulating in excess of a proper margin of safety, would be further encouraged by levying any tax imposed on insurance solely on surplus withheld from distribution. The premiums—the cost of in-

surance—should not be taxed; the reserves required by law to be maintained for the security of the business and the fulfilment of all contracts, should not be taxed. If taxation of insurance is to be justified at all, then let it fall upon any funds held by the companies in excess of the minimum necessary to enable them to fulfill their obligations. A man's surplus money, held for him by an insurance company, may perhaps be taxed like his other property; and certainly if insurance taxation were based solely upon surplus funds withheld from distribution, the companies would not find it profitable to maintain a greater surplus than prudence and safety required, and the danger, if any, of such accumulations would be minimized. In the interests of the State, all burdens and additions should be taken from the price paid for insurance—the premium, and the companies should be encouraged to further reduce the cost by the declaration of prompt and liberal dividends. Both objects could be best secured through repealing all premium taxes, and basing insurance taxation solely on surplus funds withheld from distribution.

Conclusion.

In conclusion, this summary of the views herein expressed is submitted for your consideration.

1. That governmental regulation of life insurance, aimed to best protect the interests of the public, should be along such lines as will most surely lead the public to form and follow an intelligent judgment concerning the business and its conduct by individual companies.

2. That sound regulation should encourage individuals to think and choose, and not lead them to depend on the State for a semi-guardianship which can never be satisfactorily fulfilled.

3. That to this end what is required is detailed publicity concerning the operations of the companies and a strict accountability for surplus and other funds.

4. That laws under which the State interferes with details of management, or dictates methods of operation, are:

(*a*) Unnecessary, because the end of good management sought can be more simply and more certainly attained by other methods.

(*b*) Unsound, because government should not aim to do for the individual what the individual can better do for himself, and because, with legislation governing the fundamentals of publicity and accountability, the evils which have led to the demand for interference in details will be cured by the almost automatic operation of natural forces—the laws of progress and the effect of competition—which are always to be preferred to arbitrary restriction.

5. That all so-called retaliatory tax laws should be repealed; and that all laws imposing taxation upon life insurance should be so amended that insurance should be taxed, if at all, only to the extent necessary to meet the cost of government supervision; this tax to be levied solely on surplus withheld from distribution (not on reserves or premium income).

DISCUSSION.

MR. ANDERSON: Mr. President, the last speaker (Mr. Johnson) has spoken at considerable length about publicity, limiting himself, however, to general principles. I would like to ask him one or two specific questions.

First, would he be willing to publish the dividend factors used by his company?

Second, would he be willing to put into the policy a table showing how much was collected to defray expenses of management, how much was collected for *cost of insurance*, and how much was set aside each year as a reserve?

MR. JOHNSON: Might I enquire, Mr. President, if my questioner comes from Wisconsin?

MR. ANDERSON: I do.

MR. JOHNSON: The questions indicated as much to me, for they refer to ideas embodied in the report of an Investigating Committee which has been in session in Wisconsin, and which has made recommendations to the Legislature of that State

on this subject which are, to my mind, more impracticable and unsound than any of the many other radical suggestions which have been offered elsewhere. I am accordingly very glad of an opportunity to answer the questions. I judge he desires my view of the desirability of publishing dividend factors and of including in policies issued a table showing the division of the premium between mortality, expense and reserve accounts, rather than an expression of what might be the practice of any particular company in such a matter. What will best serve the interests of the public (which is the question that interests us as economists), is the adoption of such regulations, and only such, as will lead to the granting of sound insurance at the lowest possible cost to the individual policyholder. The object of all insurance legislation should be first to safe-guard the business, to render it absolutely secure, and then to so regulate its conduct that the public will be able to procure all necessary information concerning the conduct of individual companies, and to judge, from the requirement of frequent accountability, which is rendering the best service. Under the rules of publicity and accountability which I have urged, the end sought would be obtained through the operation of natural laws of selection and survival, far better than by an attempted regulation of the details of the business by the State. In my judgment the publication of the factors by which the dividends paid by the Companies are determined, and the printing on policies of tables showing the division of the premium into its elements, not only would not help in accomplishing the end sought, but would confuse a matter which is now none too clear to the average policyholder. The student can readily procure the details referred to from an analysis of the companies' reports or an examination of the tables on which their rates are based. The policyholder is not interested in *how* his dividend is figured, but in *what his dividend amounts to in dollars and cents*, and how it compares with the dividends paid on similar policies by other companies. What affects the policyholder is *the ultimate result*. If that be satisfactory, information concerning the details of operations which lead up to the result will

prove of no interest to the members at large, and they would not appreciate the significance of the various elements entering into the result even if the information were before them. The only ones who would be interested in these elements would be experts and students, who have sufficient specialized training to understand the significance and meaning of the details, and for them, as indicated above, the essential facts are already at hand. The case of the general policyholder may be likened somewhat to that of a sick man laboring under the agony of great bodily pain. He sends for his physician, who comes and prescribes for him, relieving him from the pain and restoring him to health. I take it that the man who is thus suffering acutely, is much more interested in the result, in being promptly relieved, than in the question of how the doctor's prescription may be compounded and whether the drugs used are intended by the physician to act upon the heart, upon the nerves or upon the kidneys. The end sought is relief from suffering, and he would prefer to have it promptly furnished rather than to have the relief postponed while an earnest but impracticable student of medicine delivered to him a dissertation upon the character of the various drugs which would best fit his case and upon the effect which each element of the prescription might have upon the different organs of the body.

Until the day arrives when corporations can be conducted without the intervention of human beings you will find it necessary to consider the human equation even in connection with the management of an insurance company. Corporations differ just to the extent that individuals differ and the exact results attained in the different departments of insurance administration depend largely upon the experience, the judgment, and the knowledge of the individuals charged with the responsibility for the work. Just to show you what confusion the publication of dividend factors might cause to the non-expert policyholder (and the great majority belong to that class) let me refer to the sources from which so-called dividends to policyholders are made up. The rates of an insurance company are based upon a certain table of mortality,

it being assumed that the reserve to be accumulated from the premiums will earn a certain rate of interest, and a reasonable addition being made to the premiums for expenses and contingencies. If through the careful selection of new members, and through the introduction of an adequate number of new lives, the actual mortality experienced falls below that indicated by the table on which the rates are based, there is a saving which may be distributed in dividends to policyholders. If the actual net rate of interest earned by the Company exceeds the rate which it has assumed the reserves will earn, this excess interest is added to the surplus fund and may be distributed in dividends to the policyholders. If the expenses are less than the amounts added to the premiums for expenses and contingencies, then the saving on this account is also available for dividends. There are other minor sources of profit (or loss), such as that which arises from the sale of securities which have appreciated (or depreciated) in value; but it is from the above items chiefly that dividends arise. Now to show you the misapprehensions which the publication of dividend factors might give rise to, and the harm which might be done by such an unnecessary practice, let us consider the case of three different companies, all amply solvent, all possessing the good will and confidence of their policyholders and granting sound insurance at low cost, but all differing in the details of their conduct owing to the human equation which must not be lost sight of in considering and in dealing with this or any other question of an economic nature.

The first Company, we may assume, is one which is very economically managed, in which the expenses fall well within the provision for that purpose in the premiums, thus giving rise to a substantial fund saved for the policyholders and applicable toward dividends. Its economical methods have been accompanied by sound financial management, so that the investments have not only been made without loss, but have netted a rate of interest substantially in excess of that required to maintain the reserves, thus furnishing another contribution to dividend account. The Company, however, because of its extremely economical basis of expenditure, has

been able to procure only a comparatively small new business year by year, and the fresh lives introduced have not been sufficiently numerous to markedly affect the mortality, which has accordingly approximated the table rate. Hence, while there has been a substantial contribution to the surplus fund from which dividends are paid, both from the savings on expense account and the excess interest earned, there has been very little saved on mortality account.

Our second Company, we will assume, has been managed with more freedom of expenditure, which has given less of a contribution to dividend account from expense saving, but which has resulted in the procurement of a much larger volume of new business, the fresh lives introduced leavening the entire mass of policyholders and resulting in a mortality rate well below that provided by the table, thus giving a large contribution to dividend account from mortality saving, a contribution which fully offsets the increase in the expense account over Company Number One. The second Company has likewise been well managed financially so that there has been a contribution to dividend account from excess interest similar to that in the first instance.

The third Company, we will assume, has, owing to a very excellent repution, been able to get an adequate amount of new business and so have the benefit of a low mortality, thus making a substantial contribution to dividend account, while at the same time keeping its expenses on a very economical basis, this also giving rise to a substantial fund for dividends in the shape of expense saving. It, however, has not been as well managed financially, or through some ill-fortune has had some of its investments turn out poorly (investments very possibly which were originally made thirty years ago by some previous management), and hence instead of the net interest earned exceeding that required for the maintenance of the reserves it has just been sufficient for that purpose, and there is accordingly no contribution to surplus or dividends from interest account.

Now the dividends paid on policies by these three companies are practically identical, and a member of one receives his in-

surance at just as low a cost as the members of the other two. It, of course, is of value to the Directors and the Officers of each Company to examine the details of their business, the results on the different accounts, etc., and take such steps as may be necessary and possible to strengthen the weak points and bring about ultimately a saving on all three accounts. Yet, of course, it may not be possible to overcome the effect of some early mistaken policy as to investments, for instance, for a great many years to come. There are companies holding in their investment account to-day real properties title to which became vested in them thirty-five or forty years ago through the mistake of some previous management. The properties have been disposed of gradually as opportunity has offered to do so profitably, or at least without too great loss; but the effect of some mistake of this character in the matter of investments may not be fully overcome by a company for a quarter of a century. The facts are also of interest to the student and to the insurance expert, but I cannot see of what earthly value it would be to the average policyholder who had a policy perhaps in each Company, on which the dividends were identical and which were all giving him his insurance at the same cost, to know that in one Company the larger part of the dividends came from expense and interest savings, in another company from mortality and interest savings, and in the third from expense and mortality accounts. It would do the average policyholder no good to require each company to publish the factors used in the computation of its dividends, and would simply arm the unscrupulous with a new method of deceiving and confusing the public. What is needed is to bring out the simple result as to which companies are granting insurance at the lowest cost, and confusing details as to how that cost is arrived at, while of value to the expert and procurable by him upon an analysis of the official reports of the companies, would be of no possible value to the policyholder at large.

My answer on the subject of publishing dividend factors applies in large measure to the proposal that a table be attached to every policy showing the elements into which the

premium is divided, its application to expense and mortality accounts, and the balance of the latter account, i. e., the terminal reserve, left after making provision for current mortality. It would serve no good purpose; it would not avail to reduce the number of deaths, or to increase the net interest earnings, or to lessen the sums, for instance, which the companies are compelled to pay to the States for taxes and which would otherwise go to the policyholders in dividends. It would be just as proper and contribute just as much to the welfare of the public for the State to require the publication of such a table upon insurance policies hereafter issued, as it would be for government to insist upon the publication of a summary of operating expenses on the reverse of every railroad ticket issued, or the furnishing by the Universities every term to each student of a printed statement indicating the proportion of his tuition fee which has been applied to the salaries of the professors, to the maintenance of buildings, and to the purchase of supplies.

Unorthodox as it may seem in this day when the interests of the policyholder appear to have been taken within the especial care of those who lack sound knowledge of or actual experience in the conduct of the business, I venture to say that there is no body of men so keenly interested in any and every measure which will actually benefit the policyholder through a reduction in the cost of life insurance, as the insurance managers themselves, and I can only say that if the laws leave them free to conduct their business efficiently without being hampered by absurd and useless restrictions, but with such publicity and accountability as will enable the public to see year by year the actual results attained, the problems which have been given so much consideration within the last year or two will be completely solved, and you will soon find all the companies conducting the business conservatively, successfully, with due regard to the interests of the policyholders, and with just as great a degree of economy as can be applied without impairing efficiency.

MR. ANDERSON: I was fully aware that my questions would meet with opposition. We had those questions discussed at

the meeting of the general agents in Milwaukee, and I am quite familiar with the objections that have been made against the insertion of such a table in the policy.

I would like to say just another word since the Wisconsin Investigation Committee has been referred to. I feel that I have some interest in the work of that committee, having been in their employ as secretary from the time the work began until it was finished.

There seems to be an impression current in the East that the recommendations of the Wisconsin Committee are unreasonable. I will venture to say that when the report comes from the printer some parts of it, at least, will not appear as bad as the rumors that have been circulated about it. Some parts may be worse. (Laughter.)

I want to correct the statement made by my friend, Mr. Hoffman, to the effect that the Wisconsin Committee rejected everything recommended by the Armstrong Committee. The fact is that the Wisconsin Committee adopted many of the recommendations of the Armstrong Committee, and of the Massachusetts Committee as well.

Perhaps it might not be out of place in this connection to call your attention to the fact that there are three kinds of insurance investigations. First, there is the actuarial or departmental examination made by the various state departments, which concerns itself almost wholly with the question of the solvency of the companies. That is to say, they value the policies and appraise the assets. If the assets are sufficient to cover all the reserve liabilities and leave a working surplus, the company is given a clean bill of health and that is the end of it.

Second, there is the lawyers' investigation, which consists principally of calling witnesses to the stand to determine whether or not there have been any questionable transactions, and

Third, there is the economic and social investigation, which may or may not include both of the other two. Its object is to determine the economic and social efficiency of insurance. That is, to determine what is actually received as benefits for

the premiums paid, as well as to determine whether or not the burdens are equitably distributed among the individual members.

The Wisconsin Committee has gone deeper into the question of insurance from the economic and social standpoint than any other committee ever did. I cannot at this time discuss in detail the data gathered by our committee, but will state very briefly some of the most striking results.

First, there is an appalling amount of social waste resulting from the lapsing of policies before surrender values take effect, as well as from the heavy surrender charges imposed by many companies when policyholders surrender their policies.

Second, the lapses appear to be by far the greatest among the small policies, and this goes to show that the greater part of this social waste is borne by those who are least able to bear it.

Third, panics and hard times have considerable effect on the lapses and surrenders, especially if the policies have been recently issued when the financial disturbance comes.

Fourth, quite contrary to our expectations, and contrary to the contentions of some insurance men, the annual-dividend policies were shown to be much more persistent than the deferred policies, in some cases the difference being over one-third.

Fifth, it appears that the present method of loading the premium to defray expenses is unscientific and grossly unequal as between the individual policyholders having different kinds of policies, and for this reason the committee recommended that the companies be required to show, when the application is written, how much is collected each year for the purposes of expense, cost of insurance and reserve. The plan is entirely feasible; it is perfectly just, for it is publicity of the most effective kind.

I also wish to say that I heartily agree with the views expressed in the first (Prof. Robinson's) paper in its advocacy of federal supervision, because uniformity in the legal requirements is highly desirable, if not absolutely essential, to an

effective control of the business. We can never have uniformity as long as forty or fifty states legislate independently of each other to regulate the same companies.

W. G. LANGWORTHY TAYLOR: By an extension of the term "gambling" it may be made to include all businesses: in all there is an element of risk. Howeer, risk is the most important element in industrial progress. That is to say, all efforts at progress are tentative and all industrial undertakings are, in the nature of things, ventures. Not only may outer nature be unpropitious and mechanical inventions fail when put to the test of wear and tear, but demand may fail to be aroused or may suddenly vanish after it has long been relied upon as a constant factor in the problem. In fact that business which is looked upon as furthest removed from gambling is the one in which there is perhaps the greatest risk, the business of agriculture.

But provided the risk be incurred for the purpose of creating additional values, it is economically praiseworthy and cannot be called gambling, since gambling is a term of moral stigma. The American people is considered to have increased in wealth faster than any other and this is partly because of the well-recognized fact that the American business man is more willing to incur risk than his confrere of any other nationality of equal intelligence and technical attainments. This kind of risk is progressive or incurred in the cause of industrial progress. It does not invite government interference and the presumption in this case is against government regulation, at least according to the theory that enterprise is rather a matter for individual than for government initiative. If government interference becomes necessary it is only in extreme cases and should be minimized. Government interference in the field of competitive business is only in order to secure fair dealing between men; and generally publicity of operations involving the element of equity or trust is the measure of public control. Especially where such vast investments are involved as those made by life-insurance companies, is it generally conceded to be inadvisable in a progressive civiliza-

tion such as ours for government either to take over the business or to hamper the judgment of the persons upon whom such vast interests have devolved.

The simple theory of life insurance, however, involves no such vast accumulations of property as have been made by our insurance companies. The reserves involved in this business do, of course, amount to a large sum, but they are less than the sums actually in the hands of the insurance companies. The risk involved in life insurance is much less than the risk in other businesses. As to the insured, he is sure to die anyhow; the insurance neither accelerates nor retards that event; and the premium is fixed beforehand. Nor does the insurer take so much risk as is taken by the ordinary business man or company, for on a sufficient group of lives the mortality tables give a pretty accurate prediction.

Life insurance therefore in its pure form is perhaps better calculated to be managed by a government office than other business, especially if the government has a debt in which the reserves may be invested in the same way in which deposits in the Postal Savings Banks in France are invested in the French national debt. But there are grave objections to the taking over of life-insurance business in its pure form by government, and fortunately no one is proposing that that be done in this country.

With endowment insurance the case stands very differently. It is not insurance at all but the very antipodes of insurance: the buyer of this risk stands to gain only if he is among a small number of survivors from a larger group. The buyer of pure life insurance buys a legitimate protection and may not have paid too much even though he lives to old age and has accumulated premiums to an amount double the insurance, as occurred in a case with which I am acquainted; but the buyer of an endowment policy is not risking his own death but the death of others. He is gambling on his own survival and on the decease of the other members of his college. It is true that there is little uncertainty to the insurer, since here again the mortality tables apply; nor, since the college of policyholders is a large one, can the insured seek by charm or

incantation to shorten their lives to his own advantage. But he is a stranger to them and he buys an opportunity to inherit their property. Is this a moral and civilized proceeding? Is it desirable from any point of view that the hard-earned savings of industrious men be gambled away to strangers instead of remaining in their own families, where they properly belong after the decease of the head of the family? It is not probable that the endowment principle would have attained such widespread favor if the matter had been put to policy-holders in this way.

Naturally insurance solicitors present the advantages of insurance very differently. Endowment and pure insurance plans are so mixed up in the policy as to be indistinguishable. For a lump sum the prospective insuree is told that he receives protection, and then is agreeably surprised with an additional contract to pay him a very respectable sum at the end of say twenty years and dividends which may have accrued up to that time, or in the most favorable case, dividends payable annually which he may spend or apply on the reduction of his premium or on the increase of his policy. Moreover if he becomes tired of his contract the company will kindly refund to him a part of his premiums already paid and thus share the loss with him. What could be more attractive? And yet if the insuree saw clearly that he could obtain simple protection for a tithe of the stipulated premium, he would think a second time before entering into the more onerous obligation. If he took the surplus and regularly deposited it in a savings bank he would get a larger return than he receives even by trading on the misfortunes of other families, and would not run the chance by his early death of presenting them with a windfall.

The endowment feature is not wholly to be condemned. Great numbers of persons have been induced to make savings who would not have taken advantage of savings banks, and thus perhaps the world is not the poorer for it and may even be richer. The benefit of this form of investment to the improvident reposes of course upon the fact that the investment cannot be withdrawn except at a considerable loss. After the contract is made therefore there is every incentive to continue

premium payments, and thus the endowment principle must have an educational feature in cultivating that spirit of saving which is the great basis of modern prosperity and especially of American prosperity.

From the financial point of view, however, there are serious objections to the plan, which partly counterbalance the educational benefit, in the scales of social utility. Soundness of a great social financial system reposes upon the obligation to pay upon demand. The bank system has grown to its present importance precisely because deposits and notes are payable upon demand. The temporary money stringencies which we continually witness are the sign of the effectual operation of the adjustment of the flow of capital between different localities through the operation of this simple principle. The institution of savings banks is a first step of derogation from this principle; but savings banks have undoubtedly been of more benefit in inculcating thrift than of injury in the immobilizing of capital. The endowment contract, however, immobilizes capital for much longer periods than savings banks. The dangers to which the whole community is exposed from this exaggerated immobilization of vast sums of capital gathered from every hamlet in the land and put at the disposal of vast schemes of financial control, have been clearly brought to light by the investigations of the Armstrong Committee. Enterprise is a good thing but there is such a thing as too much enterprise. Concentrated capital held subject simply to a distant obligation of recall, becames a tool for raiding methods in finance and for guerrilla warfare between financiers. The country has looked with alarm at the manner in which bold financiers have been able to capture vast enterprises and to combine them into vaster ones by the employment of capital not their own. The pickings of a few insurance officials are a matter of little moment compared with the use of reserve funds collected in money centers for an exaggerated control of industrial undertakings.

This evil will be cured by Time as others have been before. I am informed that there is already a marked tendency on the part of policyholders to reject this feature of insurance.

The solicitation of insurance has been carried much too far. It has been a natural accompaniment of the endowment principle. The possibility of collecting vast sums is in itself very attractive and even though they are to be paid back at a later date, the temporary control of them must give great influence to insurance officials. The vast army of agents is become a vested interest. The proposition to reduce the urgency and insistency of the hunt for possible policyholders is a very serious matter to the agent. It seems to him impossible that life insurance can survive without him; at least he knows he cannot survive without it! But insurance is not the only business in which solicitation has been carried too far. The evils of over-advertising have often been descanted upon. The mails are used to pester the whole community with propositions in mining stocks, patent medicines, and books, craftily couched to catch the unwary. Let us have a partial return towards buying the thing we know we want at the place where we know we can find it!

The evils of over-solicitation have been proved in many different ways. So accustomed are life-insurance men to its necessity that they never question it. Even in straight life insurance they claim that an infusion of fresh lives is necessary in order to keep the average of ages uniform, but this certainly cannot be true if the premium paid by each individual represents its true actuarial worth and if a sufficient number of lives—say a thousand—be included in the group. Beyond a certain number, additional lives add nothing to the actuarial necessities of the case. The endowment principle adds enormously to the desire for further extension of business on account of the unrestrained passion of men for the aggregation of big capitals, while it is notorious that fraternal organizations would have to close their doors very quickly if they could not keep down the assessments by new insurance, and that even new insurance cannot keep them on their feet very long.

Perhaps the best evidence of the illegitimacy of undue solicitation is to be found in the enormous number of lapses, especially in industrial insurance. Thus it is stated in the

Armstrong Report: "It is found that in the Ordinary Department over 44% lapse during the first three years. In the Industrial Department between 62% and 66% lapse in the first three years." (P. 337). Stated in another way, the number of lapses including deaths, which amounted to less than 1%, is found to be as follows:

Within 13 weeks	29%
Within 13 to 26 weeks	12.8%
Within 26 to 39 weeks	5.7%
Within 39 to 52 weeks	3.8%
Total within year	51.3% (P. 338.)

"In 1905, 1,253,635 Metropolitan and 951,704 Prudential policies lapsed" (Louis D. Brandeis, *The Independent,* Dec. 20, 1906, p. 1478). The same writer says that the Columbia National Life Insurance Company wrote during the year 1905, 103,466 industrial policies. At the end of the year it had outstanding only 63,497; and yet of the 143,863 policyholders only 699 had died, while 79,677 policies—that is 114 times as many—had lapsed." Professor Allan H. Willett states: "Of the business terminated by the four industrial companies in Connecticut during the year 1903 4.41% was terminated by surrender and no less than 90.10% by lapse. This represents an enormous tax upon the resources of the laboring classes." (*Political Science Quarterly,* Vol. 20, p. 471.) The same author states, "The average of regular terminations for 31 companies reporting to the (Connecticut) Department was 35.21% of the total terminations, leaving 64.79% as the share terminated irregularly, of which all but 5% was by lapse or surrender."

Under these circumstances some recourse to state intervention and regulation is undoubtedly indicated. Whether complete prohibition of deferred-dividend contracts is advisable may be open to question. Certainly the policyholder should be notified annually of the exact amount due to him under the existing condition of the company. That requirement would prevent the companies from holding out expectations of important future gain from the investment side of

insurance. Perhaps it is not a bad scheme to restrict taxation of insurance companies to the undistributed surplus of the company; and further than this the utmost publicity of the operations of insurance should be secured.

In the matter of securing publicity the state insurance departments have signally failed. They have rather been agencies for the promulgation of whitewashing reports which have been used by the companies as advertisements for the further spreading of endowment policies. Government regulation should not forbid the spreading of endowment insurance. The general tendency towards centralization of commercial regulation in this country indicates that something should be done towards stimulating the activities of the federal government in the matter of investigation of life-insurance methods and exposure of abuses. The Bureau of Corporations already has the power to investigate life insurance. Let it use that power. If it needs additional money and men for the purpose they will be readily forthcoming when the attention of Congress is called to the matter.

Economically speaking insurance is not commerce. It is finance. The essence of finance is the contract of guaranty; and insurance is plainly a contract of guaranty. But the lawyers are taking care of the constitutional question for us. They are rapidly deciding that insurance *is* commerce, and for present purposes it makes very little difference on what constitutional theory the requisite powers are given to the central government. It has not been proposed that the central government charter insurance companies but that it be given additional powers in enforcing publicity. Our narrowing contact with foreign countries touches us in insurance as it has touched us already in commerce, in finance, in diplomacy, and even in educational questions. We want to take every means at command to find out whether our insurance magnates are promoting railroad combines and whether they are using insurance funds in participation syndicates, in collateral trust bonds, or in bank accounts A or X.

FRANK E. HORACK: Without entering into the constitu-

tional or legal difficulties to be encountered and overcome before the organization and government control of insurance companies by the National Government can become a reality, I want to emphasize what in my opinion would be the chief advantages of such organization and control.

The fact that the insurance companies themselves are working toward this end is not necessarily against the proposition. Government control will undoubtedly benefit the insurance companies by giving them a uniform and simplified organization. This must mean a considerable economy in management over the present system. Moreover, I believe that if means are found to bring this insurance business within the power of the National Government, it will hasten the movement for the organization and control or the control at least of industrial and business corporations engaged in interstate business.

The insurance business is only one of the great enterprises conducted in corporate form in this country which must sooner or later come under the surveillance of the National Government. President Roosevelt urged national legislation for corporations engaged in interstate commerce in his first message to Congress and this year to the second session of the 59th Congress he again calls attention to the need of securing Government control of those great corporations the operation of which are confined to no one State. The impossibility of securing uniform legislation by State action is apparent to any one who has given the subject the slightest thought.

In my opinion all of the arguments urged in favor of organization and government control of insurance companies may well be applied to all the great corporations engaged in interstate commerce. To sum up briefly, the advantages of Government organization and control are:

1. It will give such corporations a uniform and simplified organization.

2. It will make possible a uniform line of court decisions respecting the powers and duties of such corporations.

3. It will be one of the most efficient means of checking the evil of overcapitalization.

4. It will give better protection to policyholders and to stockholders, particularly in giving them information as to whom their associates are.

5. It will give American companies transacting business abroad a better standing, as well as better protection.

6. It will check excessive profits and reduce the cost of insurance.

7. It will put a stop to the disgraceful traffic in corporate charters for the sake of the fees which the corporations willingly pay for immunities.

8. It will put the standard of corporate legislation in this country on a par with that of England and Germany.

FREDERICK L. HOFFMAN: The address of Professor Robinson before this Association marks an important step in the advance of insurance science as a branch of economics. The observations, on the whole, are sound and in conformity with the facts, and the address illustrates forcibly the value of independent and impartial research work in practical economics. The scientific study of insurance has been almost completely neglected by economists, with the exception of the valuable monograph of Mr. Allan H. Willett and the occasional discussion of its social aspects and importance by Prof. Ely, of Wisconsin. A very promising field lies open to any one, but no more serious error could be made than to assume that all the knowledge and wisdom respecting the business is to be found in the Report of the New York State Legislative Committee, or in the Report of the Special Committee of the Legislature of Wisconsin. Insurance has a wide literature and most interesting history, but few trained minds in economics have given the matter serious concern, and the subject awaits the coming of the master mind which shall successfully differentiate the sound theory from the unsound, and the valuable material from the worthless. In no direction, perhaps, is the value of special research-work on the part of trained economists better illustrated than in connection with the constitutional aspects of the problem of

Federal supervision of insurance, or the specific question whether, under our Constitution, insurance is commerce or an element of commerce within the meaning of the Commerce Clause. Now, while there has been much discussion upon this point, there has been practically no research-work to establish with accuracy the point of view of the early American statesmen from a study of the works of Hamilton and Wilson, the early American State Papers, the debates of Congress, etc., not to speak of the much-neglected field of the actual practice of ancient and modern commerce and navigation.

Much valuable material will be found in the early dictionaries of commerce, and dissertations upon the Law Merchant, maritime law and custom, and even international law contain much that will prove useful and suggestive. In other words, there is urgent need of a comprehensive inquiry into our political and commercial history, to ascertain whether or not in the early debates and discussions, insurance has been considered an element of commerce in the same sense as bills of lading and bills of exchange. It is to be hoped that some earnest student of economics will take up this question and produce a work useful for practical purposes and which would serve as an aid in the successful solution of the pending problems of the relation of insurance to the State.

Not much good, however, is likely to result until the whole subject of insurance is included within the scope of university education and until the science of insurance is taught in the same manner as other applied sciences are now being taught in our great institutions of learning. An excellent beginning in this direction has been made in Germany by the establishment of an insurance seminary at Göttingen, under Prof. Lexis, and of an insurance course in the Commercial High School at Cologne under Prof. Moldenhauer. In so practical a country as America, it is difficult to understand why insurance has not long since attained to the dignity of an applied science and been taught as such in our universities. By such teaching I mean more than the actuarial branch of the business of life insurance, for I would make the instruction include every department of the business, or, in other words, represent insur-

ance science in the true and complete sense of that term. The division is natural into different sections—such as, first, the economics and theory of risk and insurance; second, the history and literature; third, the law of insurance, both private and administrative, including State supervision and control; fourth, the mathematics of insurance, or the practical application of the doctrine of probability; fifth, the finance of insurance, including the doctrine of interest; sixth, the administration of insurance companies, including the science of accounting; seventh, insurance medicine, including hygiene and diseases of occupation; eighth, the business of insurance in practical life, or its social aspects, including statistics, comparative experience, social utility, etc.; ninth, insurance technology, including insurance engineering, prevention of fire waste, etc.

If some such comprehensive plan were introduced into one or more of our leading universities, in place of the present more or less inadequate method of instruction, and if the co-operation of the companies were enlisted to secure material and data, literature and forms, etc., the step would mark the beginning of a new era and the result would be to substitute facts and truth for error and guesswork, and the benefit to society and the State would be incalculable.

F. A. CLEVELAND, PH. D.: The papers read and the discussion following seem to be practically in accord in their advocacy or deferential acceptance of the principle of publicity. That is to say, the need for state control over insurance companies is accepted and publicity is held a necessary incident thereto.

Advocating publicity, Mr. Johnson, in his excellent paper on "The principles which should govern the regulation of life-insurance companies," contrasts the almost complete absence of regulatory acts in Great Britain with the voluminous State insurance legislation in the United States, and concludes that the one provision—"publicity"—in Great Britain has given a complete solution of the problem of regulation, while America with all her statutes—inquisatorial, restraining and

mandatory—has been periodically wrapped in scandal, and both policyholder and insurance company have suffered greatly from an inefficient form of control.

"The statutory provisions covering the operations of life insurance companies in Great Britain (since the adoption of which they have been particularly free from cause for criticism) are embodied in the 'Life Insurance Companies' Act, 1870.' The framers of the Act aimed at allowing the companies full freedom in their conduct of business, while compelling them to make public the results of the operations." This is the *resumé* given by Mr. Johnson of the English situation. His interpretation of legislative motive is that the English people believed that *publicity would do more to secure sound management* than any other method which might be adopted.

The conclusion reached by Mr. Johnson seems to be well supported by experience, not only by the experience of insurance companies, but also by English practice with respect to every form of corporate activity and executory trusteeship. From his reasoning, however he has omitted an important feature of the English Statute Law, viz the "Companies' Acts." requiring an independent audit of all corporations registered under the act of 1860, and specific Acts requiring the audit of Savings Societies, Friendly Societies, Railway Companies, Water, Gas and Electric Lighting Companies, etc. While the Act of 1870, regulating life insurance did not make obligatory the appointment of independent auditors by stockholders, (or in mutual companies, by policy-holders,) and the Companies' Act of 1890 includes only such insurance companies as were registered under the law of 1862, the defect in the law is effectively cured by an enlightened public opinion requiring financial statements to be certified to a basis of credit and public faith. One authority comments as follows: "This [the failure to impose the duty of an independent audit] was certainly a grave omission, and will no doubt be rectified in a future Act, as there is no class of company which so imperatively demands a strict investigation of its accounts. It is true, however, that nearly all life-insurance companies have auditors."

The English law above referred to is the result of the investment losses and scandals which occurred in the early part of the eighteenth century. Between 1840 and 1870 Parliament had enacted numerous measures for the protection of stockholders and other investors, an essential provision of which was that the stockholders at their annual meeting (when officers are elected) shall appoint an independent auditor. These auditors as the representatives of stockholders and beneficiaries were given access to all books, records and files kept by the officers and trustees of the Company and were held civilly and criminally responsible for the truth of financial statements made. Such companies as do not specifically come within the statutes find it to their advantage to have the certificates of auditors on their statements.

This general practice supplements the specific requirements that corporations shall report to the Board of Trade. The independent audit, as a function of control, is seldom touched on in discussions pertaining to the regulation of corporations; Professor Robinson's paper is among the few that have drawn attention to the relations of an audit to the problem of public control. If there is anything to be added to what has been said it is along this line.

The contrast between the English method of control and the American is pointed. England throws the primary burden of control on the stockholder or beneficiary, and by law provides the means necessary to its enforcement. To restate the provisions of English law, it requires: (1) that stockholders shall appoint a representative to inform them as to the manner in which the corporate estate which is in the possession of officers and trustees has been managed and to report on the conditions of the trust, thus placing in the hands of stockholders and beneficiaries a non-partisan statement which may be used as a basis for protecting the rights and equities of parties in interest; (2) that the officers shall make a full report to the Board of Trade.

In the United States we have followed the Continental practice. We have assumed that the Government is the guardian of the stockholder. Having a democratic gov-

ernment, instead of adopting the democratic rule of self-help which prevails in England, we have assumed that it should become paternalistic. Even in Germany and Russia, where paternalism has advanced to a point which we cannot hope to attain, government regulation has proved less effective than private regulation in England where the law requires the stockholders and the trustees to inform themselves, through their own auditor, as to the conduct of affairs.

Let us be more concrete and consider corporate conditions as they were found to exist in our insurance companies. The recent investigations have proved: (1) that for years there has been wholesale peculation and subversion of funds; (2) that during this time the companies have been under constant scrutiny by departments of insurance of every state in which these companies have done business; (3) that in nearly every instance the public officer has faithfully executed the law governing his office.

What has been wrong? The wrong has lain in expecting of the public officer something that was not intended or, under the statute, was not included among his duties. The public officer was created to protect the public against loss from insolvency. The Superintendent of Insurance, like the Comptroller of the Currency, is to perform the duty of policing the corporations in order that the public might not suffer from the impairment of capital or loss of funds which by law are required to be kept as reserves for meeting outstanding obligations. This duty might be conscientiously performed and yet millions of dollars might be wasted by the companies though inefficient or extravagant administration.

Let us look more closely to the practices of companies which have been made the subject of criticism and consider whether or not these practices come fairly within the purview of public regulation, or if so whether the public officer is the one to to apply the remedy. The causes of complaint may be summarized as follows: (1) There was no adequate method whereby the administrative officers of the company might know whether all of the income accruing to the company had been realized, and consequently no adequate administrative

control over the collecting agents; (2) there were expenditures amounting to millions of dollars per year over which there was no adequate audit or accounting control; (3) in some instances, even such audit as was provided for by the Company was from three to four years behind—i. e. the insurance companies were doing just what the United States Government is doing to-day, viz.: paying claims against them, then auditing these claims later, seeking to hold the disbursing officer responsible; (4) as a result there accumulated on the books as "unadmitted items" hundreds of thousands of dollars, which, though stated as assets under the head of "due from agents," were lost to the company and thereby were diverted from possible use as dividends; (5) supplies amounting to hundreds of thousands of dollars per annum were purchased at exorbitant prices, and in some instances, at least, with collusive intent; (6) salaries were arbitrarily raised far above the value of services received; (7) there were loans to friendly interests at rates below the market, in the form of call loans and deposits; (8) there was subversion of funds by agents for private or improper purposes; (9) there was lack of co-ordination between different departments of the service and the consequent loss in administrative efficiency; (10) there was lack of intelligence on the part of those in positions of official responsibility as well as on the part of the board. Generally speaking the whole situation may be summed up in the statement that there was a lack of intelligent administrative and directive control over the business by officers and by the Board.

The administrative side of the corporate problem has never been appreciated either by officer of state or by publicist. Few, if any, of these situations might be reached by any system of direct public control. These are administrative questions and situations, to reach which the government must either assume a complete direction of affairs or, as is done in England, require that the stockholders shall annually inform themselves by their own chosen representative as to what is being done by officers and trustees, and require, further, that the administrative officer shall report fully to the state.

In Massachusetts it has been proposed that a public accountant shall be employed as auditor, but that his employment shall be by the Superintendent of Insurance. This provision could have nothing more than a restraining effect. No action might be taken by a public officer except such as would be in the nature of police regulation. The state cannot assume to judge for stockholders and trustees as to whether an employee is rendering efficient service, whether his salary is greater than it should be, whether the quality of goods is sufficient for the purpose intended, etc., etc. Questions of economy and efficiency are for the administration to consider and for those who are interested in administrative results.

It is in this relation that the regulative superiority of the English law may be seen. The annual audit by a representative of the stockholder or policyholder is a critical examination which takes into consideration administrative questions. The report of the auditor is to the share-proprietor of the business or to his direct representatives, the trustees. The public accountant not only has to do with the protection of the estate, as has the public officer, but also he goes into every relation of economy, efficiency, operative result and financial condition in which the proprietor himself or the officer is interested. He is the personal representative of the proprietor and the professional advisor to the officer and trustee on matters of administration. The public examiner on the other hand is an advisor of a department of state. His examination can be of little aid either to officer or trustee, and can give little information to the proprietor. The report of the public accountant goes at once to the share-proprietor or to his direct representatives, the trustees, who may correct abuses. The report of the public examiner, if it may contain the same information, goes to the public officer, who may consider it only from the point of view of public control. He is not in a position to consider or act on matters of official judgment. Regulation by the state at best cannot reach questions of administrative discretion.

English experience has taught us that the best police regulation over an agent or trustee is to keep his acts constantly

before his principal, who may find a remedy in the courts for any and every breach of faith, and who has an even more effective remedy in his right to dismiss agents for failure to exercise good judgment in the management of his affairs. For either remedy the priprietor or beneficiary has placed in his hands the evidence necessary to its intelligent accomplishment.

Mr. Johnson announces "that the fundamental principle upon which all sound governmental regulation of life-insurance companies should be based, is the requirement of (1) *complete publicity concerning their operations* accompanied by (2) a *detailed and frequent accountability* for all surplus and other funds." He has shown that these two principles are operative in England which makes little provision for their enforcement, while with all our laws they are inoperative in the United States. Professor Robinson in his paper has suggested the salient feature of the English law which makes it effective. There cannot be complete publicity unless a critical examination is made, both with respect to compliance with law and with respect to administrative economy and efficiency; there can be no effective results from publicity unless the whole financial and operative situation is placed before both the state, the stockholders and policyholders. "Complete and frequent accountability" can come in no other way; it can never come through a public officer except under a system of government ownership. The last principle suggested by Mr. Johnson, *official character*, can be made effective only where there is a direct official responsibility enforced by the share-proprietor or trustee. This also, in a corporation where the share-owners or beneficiaries are widely scattered, can come only after a critical examination by a professional advisor to parties in interest.

The present trend of legislation is to add more restrictive and mandatory legislation to that which has already proved ineffective. The best regulation possible to business is to place in the hands of parties in interest data which will enable them intelligently to judge as to the manner in which their affairs are being managed. This can best be done by means

of a compulsory audit by a representative of the proprietors and beneficiaries—by one who for purposes of examination and report is made superior to the officer and trustee. The necessity for making an audit compulsory is to insure that the report shall go to the real parties in interest instead of being buried in the archives of state or concealed from view by the officers whose acts are being reported. The necessity for making the auditor civilly and criminally responsible is to make the responsibilities of an examination so great that one not trained to this character of advice cannot afford to take the risk of certifying to statements of financial condition and current operative results. By requiring a statement of affairs under such penalties and liabilities, and subject to review by officers of state charged with the enforcement by law, both public control and private control over insurance companies will be made most effective.

HOBBES' DOCTRINE OF THE STATE OF NATURE.

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In Chapter 13 of the Leviathan on "The Natural Condition of Mankind" is found Hobbes' doctrine of the state of nature as it is generally known. This may be briefly summed up as follows: In faculties of mind and body, men are, on the whole, so nearly equal that one cannot claim for himself any benefit to which another may not pretend as well as he. From this equality of ability arises equality of hope in attaining ends desired. "And therefore if any two men desire the same thing, which nevertheless they cannot both enjoy, they become enemies." There are three principal causes of quarrel among men; first, the desire for gain; second, for safety, and third, for glory. Hence where there is no common power to keep men in awe, "they are in that condition called war, and such a war as is of every man against every man." This war need not be constant conflict, since "the nature of war consists not in actual fighting, but in the known disposition thereto during all the time there is no assurance to the contrary." In such a state of war, actual or potential, the condition of man is most unfortunate and deplorable. "The life of man in such a state," says Hobbes, "is solitary, poor, nasty, brutish, and short."

In this condition, furthermore, there is no right and no wrong; no justice and no injustice, since these qualities relate to men in society, and not in solitude. In the state of nature, force and fraud are the cardinal virtues. Every man has a right to what he can get, and for just so long as he can keep it. Out of this state of nature and into a political condition, Hobbes proposed to bring men by means of a social contract, the essential condition of which was the absolute surrender of the power and the judgment of all individuals concerned to a sovereign body, individual or collective in its character.

Regarding this doctrine, it has generally been stated that Hobbes developed here a novel and original idea of the state of nature as a state of war; that a characteristic feature of his work was the emphasis placed on the selfish element and the failure to recognize the existence of social qualities in human nature; and, furthermore, that this theory, so understood, was wholly untenable, both logically and historically.

The purpose of this paper is to examine Hobbes' doctrine of the state of nature in order to determine, first, how far this idea was original with Hobbes; second, to what extent the doctrine was consistently maintained; third, what was the historical justification and explanation of the theory.

It would, in the first place, be inaccurate to attribute to Hobbes the origination of the doctrine that the state of nature is a state of war. This idea was much older than the Sage of Malmesbury. Theology had long asserted that man began with Paradise, but by Adam's fall was plunged into a state of woe. The violence and sinfulness of man was presented by the early Fathers of the church as the primary cause of the establishment of government. The influence of Aristotle upon medieval political thought was strong enough to drive this doctrine into the background or at least to compel a reconciliation in scholastic style, as seen in the teaching of Thomas Aquinas; but the Calvinistic theology of Hobbes' time and place had revived this old doctrine in its most complete form. The natural condition of man was declared wholly sinful and vile. As one of the writers phrased it " Man's nature is as full of sin as an egg is full of meat." His weakness and wickedness, moreover, were not confined to spiritual things, but extended to include the demoralization of his whole being. The natural state of man, from the Puritan viewpoint, was a wholly desolate one; and all men in such a condition were at war, not only with each other, but with the Creator and the whole creation. Out of this condition man could emerge only by an act of grace—by a compact in which he surrendered himself and his natural right to do everything and received in return a guaranteed right to do anything he ought to do,—" right " being what the spiritual sovereign declared to be right.

This doctrine in its political form was boldly advanced by the Puritan contemporaries of Thomas Hobbes. The most famous of these, John Milton, declared that states were formed "to avoid the discord and violence that sprang from Adam's transgression;" and that magistrates were chosen "to execute . . . . . that justice which else every man by the bond of nature and of covenant must have executed for himself and for another."

In brief, then, Hobbes' doctrine of the war of all against all was only an application of the current theological doctrine of the religious "state of nature" to political philosophy. By mere nature men were irreligious; so by mere nature Hobbes regarded them as unpolitical. By compact with God men attained spiritual peace; so by mutual compact with each other they obtained civil peace. The state of nature was a device borrowed from the neighboring, and, to Hobbes, familiar field of theology.

In the next place, how far did Hobbes consistently maintain his doctrine. At the close of his discussion of the state of nature, Hobbes observes "Thus much for the ill condition which man by *mere nature* is actually placed in; though with a possibility to come out of it, consisting part'y in the passions, partly in his reason." Hobbes proceeds then to show that even in this desperate state of nature there are three kinds of passion that impel men to abandon it. First, the fear of death; second, the desire of such things as are necessary to promote a living; third, a hope by industry to obtain them. Not only is this true, but "reason suggesteth convenient articles of peace." The fundamental law of nature imposes upon the natural man some fourteen commandments to observe. These are (1) that every man ought to seek peace; (2) that he should be willing to give up his right to all things, provided other men do the same; (3) that men perform their covenants made; (4) to be grateful for a favor rendered; (5) and, singularly enough for a state of war, the command of complaisance or adaptability. "The observers of this law," says Hobbes, "may be called sociable; the contrary, stubborn, unsociable, forward, and intractable;" (6) to pardon past offences; (7)

to punish only for future good; (8) forbidding open declaration of hatred or contempt for others; (9) forbidding pride; (10) forbidding arrogance; (11) commanding equity; (12) commanding common ownership of things divisible; (13) commanding respect towards mediators; (14) commanding submission of controversies to arbitration. To these laws Hobbes added, in "A Review and Conclusion," to "protect in war the power that protecteth in peace." And, finally, all these laws may be summed up in one law, "intelligible even to the meanest capacity"—"Do not that to another, which thou wouldst not have done to thyself." These laws of nature are "immutable and eternal," but oblige only "*in foro interno*," that is to say "to a desire that they should take peace;" and not "*in foro externo*," that is "to the putting them in action always." Still they oblige, and are intelligible.

It appears, then, that the fundamental law of nature commands all men, not only to be peaceable, but even to be complaisant and social. Even in the state of war, Nature commands the belligerents to be socially minded and love one another. In short, Hobbes declared that man is actually selfish and hostile to his fellows, and that the state of nature is a war of all against all, yet, almost in the same breath, he conceded that both passion and reason impel man to seek the society of his fellows.

To assert, then, that Hobbes "ignored the fact of sociability," as has been said, is unwarranted by an examination of his philosophy. Hobbes himself in his Philosophical Rudiments (p. 2) says of man that "as soon as he is born, solitude is an enemy." "I deny not," said he, "that men (even mere nature compelling) desire to come together." Elsewhere, he said that man is born inapt for society, merely because born an infant. He becomes fit for society "not by nature, but by education," although some "remain unfit during the whole course of their lives."

What Hobbes really said was that the natural state of man *would be* unsocial and warlike, if it were not for certain natural instincts and for natural reason which made him social and peaceful; in other words, man would be naturally unpoli-

tical, if he did not possess irresistable inclinations to become political. From another point of view, the natural man was man at his worst;—when he followed his better instincts or his reason he became unnatural or artificial. In this, Hobbes followed the Puritan tendency to regard the "natural" as the essentially bad, and the good as the essentially non-natural.

It is just here that the contrast between Hobbes and Aristotle is most pronounced. When Aristotle declared that man is by nature a political animal, he meant "natural" in the sense that only in this political state could he live the well-rounded and perfect life. The natural signified to him the normal, the typical. When Hobbes said that man is by nature unpolitical, he meant that, abstracting certain instincts of man, and considering these alone, and regarding these selected attributes as constituting human nature, that then, man is naturally unpolitical; admitting, however, at the same time that in order to live what Aristotle called the "good life," man must be political and, furthermore, that natural law so commands him. Hobbes' "nature" was a special part of human nature treated apart, for a particular purpose. In reality, Hobbes and Aristotle agreed perfectly that man is normally a social and political being, but Hobbes insisted upon considering only a part of man's lowest instincts as "natural," while Aristotle included the higher as well as the lower.

In this doctrine, Hobbes agreed with the *Naturrecht* school in general, although he was personally hostile to the Revolutionary movement. The explanation of this attitude is fairly clear, when we consider the fundamental purpose of the liberal thinkers. Historically considered, the task of the democratic theorists was to find a form of justification for resistance to organized and established government. With this end in view, they entered on an examination of the foundation of government and the philosophy of obedience. In opposition to divine right, hereditary privilege, custom, tradition, "the mystery that doth hedge about a king," they declared that government was essentially artificial in its character,—a voluntary, conscious product of human intelligence and will; and they asserted that, since the state was a human creation, just powers

of government could be obtained only by the consent of those creating it. Practically all of the 17th and 18th century theorists of the liberal school agreed in pronouncing the civil state as unnatural. Man might possess all manner of qualities or virtues, except that in no event might he naturally possess political characteristics. Singularly enough, the normal man upon whom their political theory rested, was considered as devoid of every political feeling or instinct, and was regarded as essentially unpolitical. As in the case of Hobbes, however, a closer examination reveals the fact that this process of reasoning really involved the division of human nature into two parts. Although "naturally" man is a stranger to political life and looks askance at government, as one who would not be entangled in its net, yet he possesses irresistible impulses to enter the civil condition, and inevitably passes over into it. Naturally he is out of society, but inevitably he comes in.

Man's indifference to civil society was, then, only temporary, and for purely philosophical purposes. Assuming that man exists naturally out of society and independent of all control, he enters the state only through the gateway of the social contract. His voluntary and conditional entrance makes possible agreement and counter-agreement, with those possibilities of broken contract, upon which the philosophy of resistance rested: and, indeed, upon which the modern system of constitutionally protected private rights is based.

Without the doctrine of the "consent of the governed" in its various forms, it would not have been easy to justify rebellion against the powers of absolutism, intrenched as they were behind the bulwarks of custom and divine right. Had there been no pre-political state of nature, had political life been considered as natural as other parts of human existence, there need have been no contract, no terms of agreement with the government, no right of resistance when the conditions were broken by the ruler. If government had been natural, obedience to it would have been natural; resistance, unnatural and abhorrent.

Viewed in this way, the doctrine of the state of nature was the corner-stone upon which the revolutionary philosophy

rested. Perhaps some other stone would have been found and used, had this not been at hand; but, already quarried by the ecclesiastical revolutionists of the preceding century, it was admirably adapted to the needs of the political revolutionists as well.

To sum up, then: first, Hobbes' doctrine of the state of nature as a state of war was not an original concept, but an application of the Puritan idea of the general depravity of human nature to political speculation. Second, although Hobbes taught that man was not by nature a political animal, he held that both instinct and reason impelled him to be political—which was much the same thing. Third, Hobbes' doctrine of the state of nature was a part of the *Naturrecht* philosophy which made this theory a foundation for the whole philosophy of obedience and disobedience to government. It was a philosophical device for justifying revolution, although Hobbes did not so employ or intend it.

RADICALISM AND REFORM.

BY JAMES E. SHEA,

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In connection with every phase of thought and activity among men there have appeared two distinct classes of minds, the optimists and the pessimists. The former are naturally Conservatives as the latter are Radicals. These minds are always considered as extremes in their day and generation and we find these opposite poles of thought protruding in either direction beyond the settled convictions of the masses.

First, let me point out a distinction between Radicalism and Conservatism in the most general idea of them. There is a sort of Conservatism which stands only upon advantages held in possession. It says: "I have wealth, I have respectability, I am well off here and well guaranteed for the hereafter. Any change, good or bad in itself, will be bad for me. Change is my enemy: I bolt and bar my doors and, so far as I can, the doors of the world against it." There is, on the other hand, a sort of Radicalism which, though often a fair thing in the mouth, means in the heart of it; "You are in place and I am out. You have and I want. Any change gives me a chance, and the more change, the better are my chances."

For more than a century there has been a vast movement of mind in the western world which now receives the general name of Radicalism, or, going back to the beginning of Radicalism in modern history, we should fix the time of its appearance when Martin Luther attached certain daring theses to the gates of the council church of Wittenberg. In the next century it assumed shape in English and New English Puritanism, in the next played a subordinate part in the American Revolution, while in France it became meantime a speculative mania, warring in the name of reason on all the higher antecedent experience of humanity. Which mania, getting to be practical, broke out in the immeasurable frenzy of the Revolution of 1789.

Now the old Radicals were distinguished by some well marked mental and moral characteristics. Their creed was, to put it briefly, that the whole social order ought to be based on a few universal and self-evident propositions.

From certain maxims and assumptions they deduced a scheme of polity which they believed with all the earnestness of unshakable conviction. Such things as custom or tradition or even expediency they deemed of small account. They began by assuming that there are certain natural rights or rights of man, and from these they concluded that certain consequences, such as universal suffrage, must necessarily follow.

To-day, the written constitutions which were regarded as so many bulwarks of individual rights and of certain fundamental principles, are found to be either somewhat hampering to progress or are liable to be stretched in interpretation so as to cover accomplished facts. We do not now think of a fixed order,—of a state of things in which no great changes are to be made. In other words, we have arrived at a different conception of human progress from that entertained by the Radicals of old. The notion of definite creation is abandoned, both in science and in politics, and has been replaced by the idea of organic growth.

There is not a principle, however sound and excellent when tempered with the necessary qualifications, which does not become false and pernicious when pushed to excess and exalted above all exception to a sweeping generality. It was a wise observation of Aristotle: "That in courses respecting our duties sweeping doctrines are more doubtful, limited ones more true, since our duties always relate to specific things."

But the would-be reformers of the Radical type are too much in haste to stop for the slow processes of induction and the gradual teaching of experience. They must have everything done at once.

They have a newly invented panacea for the evils of the body politic, a universal elixir to preserve it in perpetuity. All the complicated and jarring elements of men's natures and social relations are to be brought into an order so exact and a

harmony so perfect and peaceful that a little child might lead them.

With them the problems of statesmanship are very simple. They believe that it is only necessary to comprehend and to apply the laws of nature and the maxims of morality, and that there are wanted but half a dozen honest men to save a city. From such premises they go to the furthest logical extremes, they hold all compromise to be immoral and that to be moderate in principle is, in fact, to be unprincipled.

If the prevailing nature of the old Radicalism is considered, it will also be found to have been Puritan in the fullest sense of the word, and by Puritanism is meant a certain, high, unbending and always non-materialistic way of looking at life and approaching great questions. The true Puritan looks rather to the ends and purposes of things than to the pleasures of the moment.

The old Radical spirit was hard, earnest, unyielding, and based deep in a traditional Puritantism. As often as not, the old Radicals were men of strong religious conviction and deep piety. Even when they did not belong to some form of Nonconformity and took Tom Paine for their gospel, they were essentially serious-minded men.

Very different is the type of Radicalism now in the ascendant; the new Radical is as essentially unpuritanical as his prototype was puritanical. He is as hungry for pleasure and the lightening of the burden of life as the other was to improve his moral and intellectual status. He wants a good time in the most natural sense and a pleasant life of the kind that a great city provides.

The old Radical used to be sneered at as a person incapable of luxury, and therefore unable to sympathize with his fellow man in his desire for amusement. The new Radical knows no such incapacity. He is distinctly capable of luxury and means to have it. It is not so much that the new Radical is irreligious, as that he is non-religious. Religion, either in the way of attack or defense, does not attract or interest him: he leaves it on one side as something outside the range of pressing practical questions that interest him, or else he looks on it as an

entirely extinct volcano, a thing for gentle laughter and good-natured contempt.

In any case, I wish to point out that the religious element is gone, and with it the temper of the idealist. This lack of Puritan paste in his composition makes the Radical of to-day merely enthusiastic rather than earnest. He will grow sentimental over objects that interest him, but he does not exhibit that power of taking hold of an idea and freezing to it which characterized the old Radical.

It would, of course, be unfair to attack Radicalism on this ground, or to speak as if it were something peculiar to it to take the materialistic view of life. This hunger after comfort has invaded every class and is quite as rife among the rich and fairly well-to-do as among the poor. It is to be regretted, but it is none the less true, that as a whole we have lost the old Puritan austerity and earnestness and turned towards the delights of bodily comfort, towards an amusing and joyous life rather than one of intellectual and moral interests. The people may not be in the least more criminal or more immoral, but unquestionably they are, as a whole, more set on having a good time than they were.

Now, no movement in social reform which entirely ignores religion and the religious needs of the nation, in the long run, prevails. For a time it may appear to catch on, but in the end, the want of the religious element will be felt and will bring it to ruin. It may do very well for a time, but the vitality which the religious spirit alone supplies is soon found to be lacking and there is a collapse.

Radicalism may be very proud of the fact that it is entirely unconnected with religion to-day, but in the end it will find that fact, not a strength, but a weakness.

Radicalism is characterized less by its principles than by the manner of their application. Its political doctrine is that of democracy and as a general thing liberal men will approve of it. And though democracy may be the parent of Radicalism, this is no dishonor to the parent. Democratic ideas in a justly liberal sense must necessarily have some offshoots which are deformed, because so many persons can appreciate mere license who cannot appreciate true liberty.

There is something of paradox, yet more of truth, in the remark of Burke "that in proportion as certain doctrines are metaphysically true they are practically and politically false."

They keep the mind always dwelling on first principles, contemplating extreme cases; they keep society always in its elements; they are always beginning; always laying the foundations, by admitting nothing on the authority of their predecessors, every generation must make the world over again; there can be no such thing as a steady advance from age to age. Your Radical never regards government as something to live under, in peaceful contentment, but as something to be made and unmade.

Who would raise the slightest objection against Liberty, Equality, Fraternity and the responsibility of power, universal suffrage, even? But what are you to understand by "Liberty"? Should it be the universal leveling of all social enjoyments to the plane of the lowest class? Should fraternity encourage idleness and vice? Should national sovereignty and the responsibility of power constitute a permanent insurrection and take away the right of decision from peaceable majorities to confer it upon turbulent minorities? Does universal suffrage admit of absolutely no limit?

The Radical rushes into every innovating enterprise without waiting to inquire whither it leads. The reformer, cherishing a profound love and veneration for the institutions under which he is living, seeks their amendment only, not their subversion. The Radical, extending his condemnation from the abuses of these institutions to the institutions themselves, would gladly witness their overthrow. The one, aware that the balance of the social state can not be insured without some abridgment of the privileges of a state of nature, cheerfully submits to the restrictions placed upon his personal rights. The other is perpetually at war with these restrictions, though society could not exist without them. The Reformer, tracing the evils of the social state to their true fountain in the depravity of the heart, and aiming at a permanent cure, resorts to those notions of education and religion adapted to effect a radical change in the human mind, and thus applies his remedies to the seat of the disease.

Such are the general attributes by which Radicalism is contrasted with the right mode of reform. It has zeal without knowledge where knowledge is most of all requisite. Radical reformers are always driving with all their forces at some one object, in comparison with which, whatever may be its real value, they deem everything else insignificant. In the earlier stages of their efforts, they are seen groping after some simple, unqualified principle on which their own mind can rest and by which they can act upon the public. And, since they care nothing for that depth and sagacity of mind which would enable them to discern the true bounds of principles, how far they apply and where and when the application of them fails, they soon arrive at some unlimited generality of doctrine and their business, thenceforward, is to carry it into effect, even in cases where its application, to the unsophisticated mind, must appear plainly unjust and pernicious.

It is submitted to the reflecting student whether this is not the course pursued by many of the reformers of the present day. As has been said recently by an eminent authority:

"They have perverted democracy into a despotism of demagogues; divorced political power from political burdens; substituted centralization for self-government; universal interference and legislative regulation for individual liberty and freedom of contract; the dictation of the majority for personal independence; phrases for principles; popularity-hunting for public spirit; cosmopolitan theories for patriotic traditions."

It would be endless to trace all the ways in which this lack of sober judgment and common sense is betrayed by the Radical reformers. One of the most common is to overlook all obstacles to the speedy triumph of their cause. Says Paine, in the Second Part of his Rights of Man, "I do not believe that monarchy and aristocracy will continue seven years longer in any of the enlightened countries of Europe."

It belongs to the very idea of the Radical to be self-confident and dogmatical,—intolerant of adverse opinion. He is always aroused by the mention of the word "Reform," always enthusiastic over any new movement, no matter what name

it may take or what it proposes to do. He sees the millenium dawning on the land every time a new departure is taken. If he can only see some kind of a change, he does not care much what it is, so long as it is new and claims to be progressive.

The habit of extreme generalization applied to the subject of natural rights furnished Rousseau and Paine with those unlimited maxims which captivated the common mind with their clearness, and, when carried into application, produced the French Revolution.

And through the fond credulity of our nature, when we hear one loudly professing his sympathy with the suffering or see him making a show of unwonted zeal in a good cause, we are apt to take him at his word and to believe him to be as much more humane and philanthropic than other men as he pretends to be.

This credulity, or to name it more justly, gullibility of human nature is one of the chief instruments by which impostors of every sort promote their ends, and it is by no means necessary that one should possess great ability or render eminent public services in order to reach a high place in public estimation. However moderate may be his talents and however little he may have done for the public good, he will yet be taken by the great world to excel others as much in merit as he can surpass them in bustle and display.

Hence it is that some men of the worst character, by putting forth specious professions, often reap from the public a harvest of golden opinions, while the truly deserving are left with no reward except the satisfaction of their own sense of duty well performed.

The fact that Radicalism, as often formulated by its leaders, meets among the working classes a very wide reception proves, indeed, that the Radicals are spreading something, but it does not prove that what they are spreading is Radicalism. What I here seek to point out is that the thing which is uttered by them with a certain aim and with a certain meaning, takes on another meaning as it enters the ears of the working classes, and presents to their minds aims of quite a different kind.

Radicalism is, in this respect, rather an antagonism than a

principle. It has less of political desire or of aspiration than of the spirit of contest against privilege. It would be absurd to suppose that the ordinary Radical argued politics or considered them on scientific principles, so much as with piqued feelings and with resentment. The main idea is to pull down and not to build up. There may be a dominance of principle in a small minority but there is a dominance of feeling in the great majority.

Radicalism, speaking loosely, is hatred of class privilege. It is a sentiment which is fanned by discontent.

This brings us down to the bed-rock truth that only as a people grow better and wiser do they make intelligent progress toward the higher social state. The great task before reformers is to forward the mental, moral and spiritual revolution involved in their ideal. This accomplished, all other reforms are easy.

Although wealth has increased enormously, the condition of the poor, especially in large cities, has not improved, but has become harder. This very progress, leading to more extravagant habits and to ever-increasing accumulations of population in large cities, has, in some respects, aggravated the condition of large masses, who, either from their own fault or the fault of circumstances, have fallen out of the ranks and form the waifs and stragglers of the army of industry.

There is, then, much justification for those who are striving for social ameliorations which, even if unattainable, are humane in their intention and desirable in their end. Nor should we lightly discourage the spirit which busies itself in philanthropic speculation, for we deem it fortunate for our republican system, in these days when commercial considerations have become so largely the measure of political action, that some ardent spirits exist, who carry their ideas to the verge of extravagance. They invigorate and preserve the sacred flame which otherwise might become dim and even extinct. They quicken those whose devotion might otherwise become sluggish from their absorption in sordid pursuits and material occupations. Their too ardent zeal serves to check and counterbalance the opposite tendency to anti-liberal opinions,

which, under every form of government, exists in the very nature of many men.

If one man is a leveler in opinion, another is a monarchist in feeling, so that there is a counterbalancing weight on either side, and it is chiefly on the more sluggish mass of his own party the Radical exerts a salutary influence.

It deeply concerns all of us as citizens that all the great tendencies of human thought are rushing to this issue between Radicalism and Conservatism, between the interests of the many and of the few, between peoples and plutocracies, between humanity and every power that denies its claim.

We have taken into our own hands the powers of government; we are directly, personally, every one of us, responsible for the exercise of it, and if we continue to be, as we seem to have been, insensible to the magnitude of the trust, if we proudly claim to be free citizen electors without thoughtfully and conscientiously performing the duties of electors, if we vote factiously or will not vote at all, if, beneath the majestic frame of a free representative government the only thought of our citizens is to play out their own little game of private ambition, of money-getting and pleasure-seeking,—only freer than other peoples to be more selfish and self-willed,—if the arena dedicated to sacred Freedom is given over to violent and unscrupulous party contests, if demagogues are to be our great men and the wise and thinking are to shrink back or be driven back by the crowd,—then, I say, official conduct and morality will continue to run down, and our general government will become what some of our city governments now are, and the time will come when majorities may be more oppressive than despots and we shall be ready to flee from the many-headed monster, as did the Roman Republic, to a one-man power.

In the economy of reformation there is greater need of the moderate, prudent, judicious men, than of those freer spirits who throw themselves into the front rank and make the most noise. The former are necessary to restrain the hot passions of the over-zealous, and to give consistency and permanency to the results of their actions.

The essential thing is that we retain and make our own all

things which we have proved to be good and true. The fault of many who call themselves Radicals is not that they so readily accept new phases of truth, or what claims to be such, but rather their persistence in trying to overthrow everything that is old.

Instead of trying to get to the roots of things for the sake of testing their genuineness, they frequently attempt to pull everyhing up by the roots. Such a destructive disposition is the greatest enemy of human progress. As Phillips Brooks says: "Radicalism is not tearing things up by the roots, but getting down to the roots of things and planting institutions anew on just principles." All reform should have regard for righteousness and good government and should set aside the old forms and traditions only as it shall appear that they have no just and defensible reason for their existence.

The time is now ripe for the systematic organization of the progressive forces for the real business of politics. There is work enough and to spare for every section of social reformers.

But it should be born in mind by those who are emulous of forming and directing the public sentiment by abstract propositions and general rules, that however clear may be their evidence, and however mighty and irresistible their influence for a season, especially with the mass of unenlightened and unreflecting minds, they can never form a permanent basis for the success of any cause. Their falsity will soon begin to be surmised from the consequences they involve; it will, ere long, be deeply felt, and, at length, fully detected and exposed. Common sense must, sooner or later, rebel against the tyranny of all exclusive and extravagant dogmas, and will then avenge itself by holding up to universal contempt the figment by which it had been so long blinded and suppressed. Reaction of this kind must inevitably follow whenever the fixed limits of nature and truth are overstepped by the abstract refinements of sophisticated reformers.

The real life, the real wealth of the nation, consists in things that cannot be written down, in the unwritten and unformulated feelings that exist between class and class. The nation is great and strong in which these feelings are feelings of

mutual trust; and when each class feels and knows its own duties.

Radical views are dangerous because they nurture a spirit of discontent, of morbid excitement, of restlessness and change. They teach utter recklessness of consequences, a disregard of existing institutions, a contempt of authority, prescription, usage, and whatever in the majesty of government is venerable.

It is, perhaps, for all these reasons that Rohmer attributes to Radicalism the nature of the boy. It has the same capacity, as well as the same defects. It is enthusiastic, imaginative, to a certain extent generous, lives in an ideal world pursuing a single idea, and pursuing it frantically without regard to the evils caused by its efforts to realize it. Happily, the idea pursued is often a good one, the realization of which compensates, more or less, for the ills which it has caused. Only one thing remains to be desired, namely, that the end be not attained with such violence as to go beyond it and give rise to a reaction which shall call everything into question again.

HELPING TO GOVERN INDIA.

BY CHARLES JOHNSTON,
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The other day I read an article on India, in one of our popular magazines, in which the writer gave the British Indian Government much severe advice, asking why they did not abolish caste, why they did not introduce democracy, and so forth, and summing up the whole venture as a huge failure. The writer headed his article with "Fighting for the Common Cause," or some such phrase; and as I read, a former occasion on which I had heard the same words came back suddenly into my mind.

It was at the junction of the Nalhati State railway, amid the illimitable rice fields of Lower Bengal, where I was waiting, far on in the night, for a train that was to take me to my first post. The engine driver had some doubt as to his skill, so he spent an hour or two practicing, running his little train back and forward a hundred yards or so, and whistling shrilly till the jackals barked back at him. I was in the only first-class compartment, some six feet square, and as I dozed uneasily, I was conscious of high-pitched voices in the next compartment, talking the Bengali tongue, which I had studied industriously at home for the last two years. Finally, with magnificent rhetoric, one of the speakers cried "Amra fighting-for-the-common-cause hoilam!" And all the others applauded vehemently. They were on their way home from the Indian National Congress.

We started after midnight, and I fell asleep. The glistening sun of the early morning showed the vast rice-fields all about us, scrubby with brown stubble, as the winter rice had just been cut. Here and there and everywhere were villages, brown thatched huts clustering under groups of cocoa-nut palms and mangoes; and, though it was still chilly morning, hundreds and thousands of natives were at work everywhere in the fields, toiling, as they toil perpetually, on the verge of

starvation. As I had come by way of Bombay, crossed the Deckan to Madras, and come up the Bay of Bengal, I had gained some idea of the vastness of India—nearly two million square miles, and its still vaster population, of three hundred millions. Here, in Bengal, they were packed terribly close, for you can travel for hundreds of miles through districts with more than a thousand to the square mile, and almost wholly an agricultural population. There is the true cause of the perpetual presence of hunger, and child-marriages are universal throughout the greater part of India.

I was ferried across the Bhagirathi, and found a native driver with a ramshackle carriage, and two ponies of skin and bone tied to it with ropes. The sun had already gained strength, and one felt the sting in the sunlight so peculiar to India. The only word of my painfully learned Bengali he readily understood was the English word "Collector," and after three hours of hot and dusty driving along red roads fringed with palm-fronds, he brought me safe to the Collector's bungalow on one side of the great grass square of the Civil Station.

The Collector gave me charge of a police-court, in which I presently found myself face to face with a plaintiff, a prisoner, numbers of dusky witnesses, some sleek policemen, and a row of glib, grinning native lawyers, come to look over the new "Sahib." Seated in the chair of state amid this waiting throng, keenly conscious of the unfamiliar tongue, I felt greatly embarrassed, especially when it became evident that I must deliver some kind of judgment. I forget what I decided. I think I fined the plaintiff and dismissed the case, but am not certain.

While unusual this would not have been illegal; for the Indian Procedure Code contains a provision, whereby the plaintiff may be punished for "frivolous and vexatious prosecution." This is far from superfluous; for a Bengali who has made a moderate fortune, does not think of buying yachts and automobiles, but looks about for a nice estate with a score of pending lawsuits on it, and settles down to enjoy these to the end of his days.

In that dingy court I dispensed indifferent justice for a year, six months under a swinging punka that made eddies in the hot air. During that time I gradually realized what it is the British Government does for India, in one important field. The government confers on India the assured possession of civil rights,—security of person and security of property. This is something India never enjoyed under the many forms of native and foreign Asiatic rule which preceded the British Government; and it is an inestimable boon, far more vital than the franchise or the forms of democracy. The extent to which the secure possession of civil rights benefits India came home to me gradually, as I sat there day after day in the police-court, receiving crowds of dusky litigants, trying petty assaults and small theft cases, and seeking, as far as the inventive faculty of the witnesses made it possible, to render equal justice. The courts were open to all. Justice was rapid and cheap, and, as everywhere throughout the Indian Empire, wholly impartial and impersonal.

A little later, I made the acquaintance of another of the great blessings conferred on India by its present government: security of contract. The general idea of a contract in India was something vague and entangling. The party of the first part immediately tried to put in phrases and figures favorable to himself. The party of the second part did the same. The result was, that the two copies never agreed, and the little alterations were so skillfully made, that it was not easy to detect them. The art of forgery was carried to a high degree of perfection, and one could procure documents looking centuries old, within a few days. One expedient was to put the document on the floor of a cage in which mice were kept, with the result that in a week or two the parchment looked a hundred years old. This elasticity has all been done away with, and contracts have acquired a rigidity quite foreign to the former ideas of India. The contract is brought to the court, a copy is made in a huge ledger, which is duly signed by a court officer, and the two parties; and, in all disputes, this official copy, which is kept in the court safe, is taken as the standard. In this way the principle is introduced that "a

bargain is a bargain," and a degree of finality hitherto never known in India is assured to the written agreement.

Security of contract is thus added to security of the person and property; and in both cases any native can learn his exact legal position without the slightest difficulty. For the Penal Code, which defines the rights and duties of the individual, and the Contracts Act are translated into every one of the scores of languages recognized by the government of India, and anyone can buy a copy for a few annas in the native bazars. The Penal Code is uniform all over British India, and it makes no distinction of race, creed, caste, color or sex, dealing even-handed justice to all alike. Each person, as a person, has his or her defined civil rights; and the whole authority of the government is available, and rapidly available, to secure them. "Justice is denied or delayed to no one."

When we come to the laws of property, this uniformity disappears. Property in India is inextricably bound up with religious usages, because the great religious reformers of past ages almost always drew up a code of laws for the people, such as Moses is believed to have drawn up for the Israelites. In the East, these religious law-codes remain for ages, and become inextricably blended with beliefs and rites. So it is in India. The Hindus, the largest section of the population, still regulate their family affairs by the Laws of Manu, while the Muhammadans, who come next to them in number, found their family life on the precepts of the Koran. And so with the Buddhists, the Jainas, and a dozen other religious communities.

In every case, the British Indian government has followed the principle of conservation. The religious code belonging to each community has been confirmed, and family affairs, questions of marriage and succession and so forth, are regulated for each community according to its own religious laws. Thus we dispense to Hindus the precepts of Manu; Moslems have their inheritance cases decided according to the doctors of the Koran; for Parsees, the Zoroastrian regulations are put in force; and perfect justice is thus secured throughout the whole field of life in which religious considerations are domi-

nant. Here again is a tremendous achievement in statesmanship; something the like of which the world has hardly seen in past ages. Here are a score of nations to whom perfect equality of civil rights is secured; a score of religions, each of which is protected and conserved in a spirit of perfect toleration; each is at liberty to follow its own precepts in its special field, and is at the same time compelled to extend to its rivals the same toleration which it enjoys for itself. Here is a very real liberty, such as might by no means be secured by uniform democratic government.

For uniform democratic government presupposes a certain uniformity in the citizens of the democracy, a uniformity of race, a common tongue, or at least some easy mode of intercommunication, and a fairly uniform culture and public opinion. Without this uniformity, democratic institutions will mean a perpetual oppression of minorities, and will result in anything but freedom. But the principle put in force in India does result in a very large measure of real freedom. There is, first, as we saw, the securing of universal and inviolable civil rights, with open and equal justice to all. Then there is the sympathetic and systematic study of each community, to learn its religious, moral and social tradition, its mental atmosphere, its ideals and usages. And, as a result, there is the wise and uniform application of these religious usages within that community, in the way which best suits its own genius and temper.

There has also been a systematic cultivation of the hundreds of languages and dialects spoken by India's three hundred millions. Already in the eighteenth century Sanskrit type had been cast, and the great work begun of getting the priceless literature of Ancient India into print. Warren Hastings is chiefly remembered, perhaps, by Macaulay's essay, and Sheridan's denunciation. But it should also be recorded of him, that he was the first patron of Sanskrit literature, and helped to publish the first edition of the Bhagavad Gita. Sir William Jones, the founder of the Asiatic Society of Bengal, and thus the father of Orientalists, was an Indian judge; and his translation of Manu's Law Code was undertaken for the

purely practical end of ascertaining the Brahmanical law of inheritance. Colebrooke and Charles Wilkins were also Bengal civilians; and, in later days, Max Müller's splendid edition of the Rig Veda was paid for by the Government of India.

The popular tongues are not less carefully studied. It is an international jest of some antiquity, that Englishmen never know foreign tongues. The truth is, that no nation knows so many, or has reduced so many to writing for the first time. The British Indian Government, if my memory serves me, recognizes over a hundred different tongues and idioms; and there are at least a few officials conversant with each of them. And we have to get something more than a smattering of these tongues. We have to learn to read them, write them, and speak them fluently to the natives, using the proper forms to mark all the shadings of social rank. The members of the Covenanted Civil Service generally know three or four vernaculars well, reading, writing and speaking them fluently and correctly. I shall never forget my first oral examination in vernacular Bengali, after I had been five or six months in India. I had, as I said, studied Bengali at home for two years, and could read ordinary books, full of Sanskrit forms and phrases, fairly well: Miltonic Bengali, one might call it. But I speedily found that this was not the language of the tongues of the people, which smacks of the backwoods, not of Milton. It contained all kinds of age-old words that were current before Sanskrit first came down the Ganges valley.

On the morning of the examination, I had already acquitted myself tolerably in a conversation with the Sub-judge, a Bengali gentleman who spoke the bookish tongue that I had learned,—at least he spoke it to me. Then the examiner, a Scotch Joint Magistrate called Anderson, called in a dusky peasant who had been summoned to testify in some case, and who was sitting at the door-sill, smoking a cocoa-nut water-pipe. The Sub-judge brought him immediately before me, and said to me abruptly: "Talk to him about his family!" It would be hard to say which of us was more taken back, that skinny, brown peasant or myself. I managed, with much hesitation and difficulty, to enquire after the number, age and

well-being of his daughters. He looked as if he expected me to make him a proposal, and was evidently vastly relieved when he was dismissed, and I was told to study six months longer.

By dint of hammering away, the Civilians come to learn the native tongues, in all their richness and variety, very thoroughly and correctly. Most of them also know Greek and Latin, and two or three modern European languages, this as a result of the severe examinations which they have to pass, to enter the Indian Civil Service. It may be worth mentioning, that the total number of Covenanted Civilians, for the whole of India, is about nine hundred: this small body of picked men govern with admirable care and impartiality a population of three hundred millions. This gives an average of about three hundred thousand wards for each Covenanted Civilian, and one may say that such a government represents a tremendous accomplishment in practical statesmanship, the like of which, in all probability, the world has never seen.

Now a word about caste, which the severe critic of the popular magazine reproaches the British Indian government for not abolishing. Caste, in modern India, means two things; or rather, the present caste system has grown up from the coalescence of two things. The first is difference of race. Under the system consecrated by the Laws of Manu, an admirably conceived polity was constructed out of the mutual relations of four widely different races: a white race, now represented by the Brahman caste; a red race, ten millions of whom still inhabit Rajputana; a yellow race, forming then as now a large part of the farming population, cultivators of rice and silk, and closely akin to the Chinese; and, fourthly, a black race, the artisans and metal-workers, whose kindred fringe the Indian ocean, in Australia and Melanesia. To this polity was given the name of Chaturvarnya, "the Four-Color System," and its principle was, to assign to each race the duties and functions for which it was inherently fitted, and at the same time to prevent intermarriage between the races, as experience had shown that the "mulatto" (a word used by Manu's Commentator), was generally inferior to both par-

ents, and was very prone to disease and weakness. So that the Four-Caste or Four-Color System was really a wonderful achievement. The United States is at this moment feeling after the solution of an almost identical problem; the adjustment of relations between the white races, the Red Indians, the "Mongolians," and the negroes, and is very far from having solved the question as satisfactorily as had been done for India in the days of Manu's Code. This is the first part of caste in India.

The second part, which seems to have sprung up among the black races of Southern India, is very like the Trade Guild system of the Middle Ages. The five great guilds in Southern India, were the workers in Gold, Silver, Bronze, Iron and Stone; and the guild system secured two objects: first, the proper training of apprentices, who learned the trade from their fathers; and second, the prevention of over-crowding in any given industry. As a result of the first condition, we have the wonderful artistic skill attained by Indian artisans, whereby common brass water-pots and cotton cloths become things of beauty, fit ornaments for a cabinet of rarities.

It is evident, therefore, that when anyone speaks severely about abolishing caste, he is speaking under a misapprehension as to what caste is. No doubt the progress of ages has crystallized many of the caste regulations into almost meaningless and sometimes burdensome forms; and the segregation of races has weakened India nationally. Yet these are matters in which no government can wisely interfere, without violating the very principle of freedom, in whose name that interference is called for. Much has been done, as we saw, in the way of securing absolutely equal civil rights for Brahman and Pariah alike. And much is done by the English community in securing social intercourse between sections of the Indian races, who would not ordinarily meet at all. Thus, one has seen a set at tennis, in which the four players were a high-caste Brahman, a Mohammedan prince, a Eurasian official, and an Englishman; and these dissimilar races meet in official and social life on very good terms. They dine together, so far as caste laws admit; they hunt together; they

dance together; they even intermarry to a limited degree, where there is not too great physical unlikeness between the races; and, taking it all in all, no community in the world brings together more widely dissimilar types on an equally genial and kindly footing.

When the English first came, India was a great assembly of warring nations, each practically a despotism, as were all Asiatic nations from immemorial days. The peasant was a mere pawn in the game, buffeted this way and that by the stronger military races, taxed according to the whim of the local "publican," and his own ability to pay, and with slender security of life, family or possessions. The English came to the shores of this warring continent,—for India is in area a continent—not as invaders, but as traders, just as the Arabs, the Portuguese, the Dutch had come before them. It was by race-genius, and not by deliberate intent, that this handful of English traders in due time found themselves the dominant power in India; and the same race genius determined the manner in which they worked out their destiny and task. Traders they remained, until the great Indian Mutiny of 1857, for it was only after the Mutiny that the British government formally assumed the task of governing India.

Since that time, India has been practically governed by some nine hundred Covenanted Civilians, who have secured lasting peace among the long warring nations, establishing mutual toleration among a dozen rival religions, administering the affairs of every community and tribe according to its own spirit and tradition, and securing to all, man, woman and child alike, the inestimable treasure of fixed civil rights.

The natives of each province already have a very large part in the practical work of government. Besides the native members of the legislative Councils, there is a large body of native officials at every Civil Station,—which one may describe as the little metropolis of a million natives. Besides very responsible persons like my friend the Bengali Sub-judge, there were, at that station, four or five very well paid Bengali Deputy Magistrates, and perhaps a couple of hundred others —treasury officers, court officials, land office clerks and so

forth. Much of the actual toil of administration is carried on by these native officials, who probably number over a quarter of a million in all.

To them must be added a very worthy body, the native Honorary Magistrates, gentlemen of the Hindu or Mohammedan or Jaina community, as the case may be, who come to headquarters, and try cases on one or two days each week, an institution like that of the honorary Justices of the Peace in England. Much is also done to train the natives in democratic self-government in other ways. For every district, containing, perhaps, a million inhabitants, there is a popularly elected District Board, composed of natives with whom some English official is generally associated; and these gentlemen have many responsible tasks of practical administration to perform. There are also elected municipal councils, almost exclusively natives, who make regulations for the European, as well as for the native community. And there are Local Boards, likewise elected from the body of the natives, who have sub-divisions of Districts to look after, say a territory with a population of two or three hundred thousand villagers.

In all cases, every effort is made by the English officials to get the natives used to the idea of voting, of elections and the rest of the machinery of democracy. It has been my lot to go out camping through the District, to hold the Local Board elections, and I can testify to the sincerity and thoroughness with which these efforts are made. I can also testify to the wonder, not unmixed with suspicion, with which the Bengali villager regards the whole proceeding. Many a time have I seen in his eyes just such a look of misgiving, of uneasiness as I saw in the eyes of that lean witness, my unwitting examiner, when I began to "talk to him about his family."

There is very real home-rule in India in another way, far more congenial to Indian blood. Every village is, in a sense, a self-ruled community, with its five elected committeemen (panchayets), under a headman, who choose and regulate their own village policemen, and do a great deal in the way of practical administration and government within the village. The self-governing village is, indeed, one of the oldest things

in all law and politics, and lies behind all our systems of jurisprudence. The Sanskrit-speaking Brahmans found it there, when they came down the Ganges valley milleniums ago. The conquering Moguls found it, when they broke through into the Punjab from the wilds of Afghanistan and Turkestan. They scattered their "publicans" through the villages, to squeeze what they could out of the natives. And the English found installed villages and publicans alike; and, taking the latter to be land-owners and not mere tax-farmers, they turned them into the "landed gentry" which stands between the rulers and the peasants throughout India to this day. But the self-governing village survives immortal.

In India, therefore, the Civilians hold the balance among a score of nations, now brought together in a single great federation, and held together in the bonds of peace. This is the political achievement. Legally, this has been accomplished: to the countless millions, one-fifth of the entire human race, who swarm over the valleys and among the hills of India, there is secured personal liberty with the rights of property to a degree never before enjoyed by an Asiatic nation. Socially, what has been done is not less wonderful. Races as unlike as any on earth, not merely the very diverse peoples of the old "Four-Color System," but large intrusive elements from Arabia, Palestine, Armenia, Persia, Turkestan, China and the islands of the sea, have been brought into a condition of stable equilibrium, where all live their lives unmolested by the others, in many ways serving and supplying each others' needs. From the standpoint of religion, a marvel has also been attained. A score of creeds, Brahmanism, Islam, Buddhism, Zoroastrianism, Judaism, Christianity, and many more whose very names are strange outside India, live side by side in perfect mutual toleration, each conceding to all others the liberty it claims and enjoys for itself. These are some of the tasks which one shared in "helping to govern India."

THE SPANISH ADMINISTRATION OF PHILIPPINE COMMERCE.

BY CHESTER LLOYD JONES.

The administration of Philippine commerce stands in sharp contrast to the Spanish policy in South America. In the one case all imports and exports under the national flag were encouraged to the utmost. In the other a definite limit was placed upon both not only as to the means provided for transportation, but also upon the value of the trade to be allowed. The trade of South America was protected by the squadrons of the royal navy, but the struggling commerce of the Western Islands, as they were called, had to fight its own battles against English, Portuguese and Dutch freebooters as well as the pirates of the surrounding Asiatic nations.[1] Unjust as this treatment seems, from the Spanish point of view it was admirably well planned and consistent. In both cases the impelling motive was the same—the advancement of the interests of the home country.

The mines of South America contributed to the national wealth without interfering with the industry of the mother land, and the growth of the settlements there led to an ever increasing demand for the products of Spanish vineyards and the looms of Andalusia. The trade with America was considered highly desirable, for goods went abroad and precious metals returned. But the Philippines could offer no such advantages. They had no important mines and the undeveloped

[1] Blair and Robertson: The Philippine Islands, Cleveland, 1903.
Vol. IV. Report of the Governor, 1576. Chinese pirates.
Vol. VII. Page 67, Salazar to Felipe II, 1588. English corsairs.
Vol. XI. Page 292, Mindanao pirates. Page 305 *et seq.*, Dutch freebooters (1602).
Vol. XVII. Page 100, Dutch freebooters.
Documentos Inéditos, America y Oceania. Vol. VI, 311-44 (1612).
Vol. VI. Page 345 *et seq.* (1635).

native industry [2] did not allow of great trade, even in goods for goods. The only possible basis of development was the trade to China. This commerce, however, was of a kind least to be desired. Since there was no return trade it meant that the cargo of Asiatic goods would be paid for in coin and would incur a constant drain of the precious metals to the countries of the far east "whence it never returned." [3]

Almost from the beginning of Spanish settlement the Philippine Islands promised to win an important share of Asiatic commerce. Chinese ships came to trade at Manila and a yearly shipload of Asiatic goods left the colony for America. No restriction was placed upon traffic and it promised to make Manila one of the most brilliant of the trading capitals of the East. The market was crowded with grain and flour, precious stones from India and Ceylon, cinnamon, pepper and nutmegs from Sumatra, carpets and rugs from Bengal, Cambojan mother of pearl, silks of all designs and colors, velvets, damasks, china, porcelain and lacquer work.[4]

It was upon this flourishing commerce that the disfavor of the home country fell. The conditions in Spain at the time were singularly inauspicious. The national debt was large and depressed the country by heavy taxation. Now the islands brought in a new competition to the already languishing Spanish industry. A fair consideration of Colonial claims was not to be expected under the conditions and the merchants of Seville and Cadiz aroused themselves to secure the suppression of the new traffic.[5]

[2] Zúñiga, Joaquin Martínez de; Estadismo de las Islas Filipinas, Madrid, 1803 (Retana's edition, 1893), Vol. I, p. 160, native weaving, etc. (1803).

[3] Blair and Robertson, Vol. XIII, p. 258 (1604). Zúñiga, Vol. I, p. 170 *et seq.* (1803).

[4] Blair and Robertson, Vol. VI, pp. 310-12. As early as 1587 this trade amounted to 2,000,000 pesos. Audiencia to Felipe II (1588).

Azcarraga y Palmero, M., La Libertad de Comércio en las Islas Filipinas, Madrid, 1871, pp. 39-44, describes market, society, etc., of that period (c. 1590).

Documentos Inéditos, Vol. VI, p. 345, describes trade of 1635.

[5] Blair and Robertson, Vol. VI, p. 279 *et seq.* (1586). Petition of Seville merchants; Vol. XVII, p. 215 *et seq.* Viceroy of Peru defends Philippine trade (1612). Azcarraga, p. 45 *et seq.*

Accustomed to their monopoly of colonial commerce through the famous House of Trade they looked upon the prosperity of Manila as based upon a violation of their own rights. The manufacturing interests also joined the opposition because of the competition in the American market of Chinese with Spanish silks. It was proven that the decline of the Spanish silk industries dated from the same period as the growth of the Philippine commerce. There was no difficulty in convincing the manufacturers that the former was caused by the latter.[6]

It is clear that the commerce of the islands did interfere to some degree with the profits of Spanish industry and trade.[7] But the real cause of the decline of the silk industry from the flourishing condition under Charles V lay at home [8] and not in the competition from the far East. The persecution of the Moriscoes [9] deprived Spain of the peoples who had been the backbone of her industry and the tripling of the taxes under Philip II crushed all spirit from industrial enterprise.

The falling off of the profits on American trade also had but little connection with the rise of the Philippine commerce. It was brought about by the production of goods in the colonies, by overstocking the market[10] and by the steady increase of wholesale smuggling not only from foreign countries but through Seville itself.[11] Yet the merchants and

[6] Alvarez de Abreu, Antonio José, Extracto historial del expediente que pende en el Consejo Real, Madrid, 1736. Extended discussion of both arguments.

[7] This was admitted even by the Viceroy of Mexico, who defended Philippine trade 1731. Alvarez de Abreu, p. 135.

[8] Azcarraga, p. 83, citing Duque de Almodovar in Vol. V of Establicimientos ultramarinos de las naciones europeas en las indias occidentales (1790).

Haebler, Konrad, Die Wirtschaftliche Blüte Spaniens in 16 Jahrhundert und ihr Verfall, p. 44 *et seq.*

Colmeiro, Manuel, Cortes de los antiguos reinos de Leon y Castilla, Madrid, 1883-4, Introduction, p. 195 *et seq.*

[9] Haebler, p. 70 *et seq.*

[10] Moses Bernard, Amer. Hist. Asso., 1894, The Casa de Contrataccon of Seville, p. 93 *et seq. passim.* Alvarez de Abreu, pp. 73-4.

[11] Tornow, Max L., The Economic Condition of the Philippines, Nat.

manufacturers alike were jealous of any competition which seemed to threaten their interests. The King himself was anxious to grasp at anything which promised to recall the prosperity that had fled from his country and he was easily won over. In 1593 [12] a royal decree was issued that all trade of the Philippines with America should cease with the exception of two ships to ply once a year from the islands to Acapulco, Mexico, with a cargo valued at 250,000 duros. On the return voyage a shipment of 500,000 duros in silver was allowed. No Spanish ships were to be allowed to trade between Manila and China.

This was the beginning of the system which by its repression of all individual enterprise kept the Philippines a frontier post rather than a colony, through the greater part of their Spanish history. That any trade at all was allowed was due only to the realization that otherwise not even the semblance of Spanish authority could be maintained.[13] At first the new restrictions were not enforced, as was to be expected when the very people to whom the enforcement of the law was entrusted were the ones it most harmed. The evasions, however, did not escape the notice of Seville and in 1604 measures were adopted to make the prohibitions effective.[14] The decline of Spanish trade to Peru was due, it was maintained, to the competition of Chinese goods transhipped from Mexico.[15] Thereafter all trade between Mexico and Peru

Geog. Mag., Vol. 10, pp. 33-64. Washington, 1899, p. 49 *et seq.;* Haebler, p. 81 *et seq.;* Azcarraga, p. 58; Alvarez de Abreu, pp. 73-4.

Moses Bernard, *passim.* Attempts were made to *prevent* colonial production as late as 1803.

[12] For the gradual extension of the restrictions on trade up to 1595 see: Blair and Robertson, Vol. VI, p. 282 (June, 1586), p. 284 (Nov., 1586); Vol. VII, p. 263 (1590); Vol. VIII, p. 313 (1593), and Vol. XII, p. 46 (1595); Alvarez de Abreu, p. 1 *et seq.;* Azcarraga, pp. 48-9.

[13] Blair and Robertson, Vol. XIII, p. 258. Royal decree 1604. Alvarez de Abreu, pp. 37, 38, 53 (for 1718-22).

[14] Azcarraga, p. 51; Alvarez de Abreu, p. 204 *et seq.*, reviews laws and evasions.

[15] Blair and Robertson, Vol. XIII, p. 249. Royal decree on commerce with New Spain.

was to cease.[16] All ships to the Philippines were to sail on royal account and no one was to have a share in the trade except the Spanish inhabitants.[17]

As the Spanish were excluded from trading with China directly, they were forced to depend upon the Chinese to bring their goods to Manila.[18] Minute regulations governed this trade. The Asiatics could not come to the city to barter their goods but had to sell them by a peculiar wholesale method. On the arrival of a ship guards were placed upon it to see that no goods were illegally landed. Duly appointed officers then bargained for the cargo and if a sale was made the goods were taken ashore and "distributed among the inhabitants according to their capital."[19] This was the "pancada" or wholesale purchase adopted in 1589[20] and used until the commerce was opened to European nations in 1785.[21]

The reliance upon Asiatics to bring the goods to Manila proved especially unfortunate for Spanish shipping for it made impossible the development of a national merchant marine in that part of the world with the result that the Spanish flag—the first to enter the eastern seas, permanently disappeared. Other European nations pushed on,[22] however, and shared not only the Eastern trade to Europe but even brought cargoes to Manila. Nominally such trade was illegal but the captains regularly evaded the law by flying the Moro flag. The claim was made that one of the Moro sailors

[16] Recopilacion de las leyes de Indias, lib. IX, tit. XXXV, leyes LXXI to LXXVIII (1604), Madrid, 1864. Azcarraga, p. 73; restriction lasted until 1774.

[17] Alvarez de Abreu, pp. 28-33, 108, 204. Numerous evasions of the law even by Mexican viceroys reviewed. The restrictions noted were included in the earlier decree but had never been observed.

[18] See Cedula of 1593, noted above, and Azcarraga, pp. 74-5.

[19] Alvarez de Abreu, p. 2 *et seq.*; also p. 125.

[20] Blair and Robertson, Vol. VII, p. 137. Royal decree establishing pancada, 9 Aug., 1589.

[21] Azcarraga, pp. 141-2; also Blair and Robertson, Vol. XIV, p. 108 *et seq.*, from Morga, Sucesos de las Islas Filipinas, Mexico, 1609.

[22] Alvarez de Abreu, p. 75 (1723). English, French and Dutch enterprises monopolizing the trade.

was the captain and the European only an interpreter — a transparent subterfuge, that never failed of success when accompanied by certain valuable courtesies to the officers of the port.[23]

The management of the shipping to America was also characteristic. During the early years every Spanish citizen of the islands shared the benefit of the commerce but it gradually fell into the control of those who held membership in the board of trade or were influential in official circles.[24] The available space in the vessel was divided into a number of parts each of which corresponded to a "boleta" or ticket.[25] These tickets were divided among those entitled who could lade whatever cargo they wished. The favorite shipments were silks which gave much the greatest return on the capital invested on account of their small bulk and the inability of the officials to check undervaluation.[26]

Owing to the difficulty of punishing offences in a country so remote there appeared from the first great abuses in the management of the commerce. Everyone strove to secure as large a share as possible[27] and dishonesty in some form touched every person from the Governor General down to the humblest seaman. Command of an Acapulco Galleon was the greatest favor within the governor's gift. The salary of 4000 duros for the round trip was increased by a "gratuity" from the shippers, reaching to at least three and often four times that amount. This, with the goods shipped on his own

[23] Zúñiga, Vol. I, p. 264.

Azcarraga, pp. 76, 114-6. French and English chiefly engaged in this illicit trade, c. 1771.

[24] Zúñiga, Vol. I, p. 433. Dependence upon the religious orders for loans. Methods of trade (1803).

Tomas de Comyn, The State of the Philippine Islands (translation, London, 1821; original, 1810), p. 67 (1810).

[25] Zúñiga, Vol. I, p. 266 *et seq.* Unsuccessful efforts to secure honesty in division of cargo space.

[26] So large a part of the cargo was of silks that it was often called simply "the cloth" (1803).

Blair and Robertson, Vol. XI, p. 272. Felipe III to the Governor (1602). Alvarez de Abreu, pp. 29-34 (1705-14), pp. 101-2 (1724).

[27] Zúñiga, Vol. I, p. 434 *et seq.*

account and various commissions assured the appointee a comfortable fortune from a single voyage.[28]

The Governors too abused their power by appropriating a large part of the ship for the use of themselves or their friends. Their greed often brought into peril the entire commerce. Not satisfied with falsifying the allotments [29] of space they loaded large quantities of their own goods in the best part of the vessel, forcing those who had permission to trade, to pile in their shipments wherever room could be found. Sheds often had to be built on deck and part of the armament removed. Thus the galleons left the harbor so heavily laden that when storms came the ship had to be lightened and the consignments of those not in the favor of the governor were first sacrificed for the common good.[30] The highest ecclesiastics were no less eager to abuse their position than were the royal officials. In one instance a ship sailed for Mexico entirely on the account of the archbishop and certain other officials—outside of royal registry and notwithstanding that priests [31] as well as royal officers were strictly prohibited from having any part in commerce. Even the common sailors

[28] Blair and Robertson, Vol. X, p. 101 (1597), describes abuses; Vol. XII, p. 70 and Vol. XIII, p. 259, documents concerning efforts to secure accountability of officers; Vol. XIII, p. 261, classes of officers forbidden to engage in trade.

Azcarraga, pp. 63-4.

Zúñiga, p. 267.

[29] Alvarez de Abreu, p. 29 (1699); also pp. 98-9 (1724). Azcarraga, p. 49. Zúñiga, Vol. I, p. 269 (1803).

[30] Alvarez de Abreu, p. 98-9, protest against abuses, 1724. Azcarraga, p. 50, 50,000,000 duros lost in 17th century through overloading. Zúñiga, Vol. II, pp. 50-4, mentions six vessels lost in the 18th century. Blair and Robertson, Vol. X, p. 102 (1597), p. 131 (1598) and 163; Vol. XI, p. 115; Vol. XII, p. 48, etc. Vol. VIII, p. 261, gives royal decree aimed to prevent overloading.

[31] Alvarez de Abreu, p. 30 (1702); also pp. 101-2 (1724), and p. 210.

Blair and Robertson, Vol. VIII, p. 252 (1592). Vol. X, p. 100 (1597) priests in trade; Vol. X, p. 148, governor in trade.

In later years the religious orders loaned their funds to merchants instead of trading directly. Interest to Acapulco, 50%. Zúñiga, Vol. I, pp. 254-6. Rules changed later when enforcement found impossible. Zúñiga, I, p. 266.

shared in the booty by being allowed to ship large chests of goods entered as "clothes." [32]

The limitations on the amount of silver to be returned were also regularly evaded.[33] It was by no means uncommon for 2,000,000 [34] duros to go in a single vessel and reports were made of the shipment of 4,000,000.[35] Detection of the frauds proved impossible even when the officials tried to stop them which was not often the case.[36] If the royal officers grew vigilant for infractions small boats were sent to sea with the extra silver where they would meet the galleon and deliver the contraband coin. On arrival at Manila other boats would land the surplus outside the port so that when the cargo was examined no infraction of the law could be found.[37]

The restrictions, however, though constantly evaded were far from being without effect. The limitation of transportation facilities was observed and placed a definite check on the possibilities of abuse. The prohibition of transfer of goods from Mexico to the South American Colonies, though evaded by shipments through Nicaragua, cut down the market and lessened profits of the trade. The limitation of the value of the cargo also had its influence. For more than two centuries a continuous contest was maintained with the Seville and Cadiz interests [38] in the attempt to raise the value of the trade

[32] Alvarez de Abreu, p. 32 *et seq.* (1714); also p. 84 (1723) and p. 103 (1724).

[33] Alvarez de Abreu, p. 28.

[34] *Idem*, p. 31; also pp. 127-9.

[35] Alvarez de Abreu, pp. 54-90, abuses. 3,000,000 or 4,000,000 duros taken back. Azcarraga, pp. 55-8, Seville charged that one ship had a cargo worth 10,000,000 duros. Comyn, p. 76 (1810), "Many ships have brought 3,000,000 duros." Zúñiga, Vol. I, pp. 269-70, evasions; "return nearly 3,000,000."

[36] Azcarraga, p. 51; Documentos Inéditos, Vol. VI, p. 368 *et seq.* Effort to get honest administration in 1636.

[37] Blair and Robertson, Vol. XI, p. 118 (1599); Vol. XII, p. 68 (1602).

[38] Alvarez de Abreu, p. 29 *et seq.*, for steps leading up to this increase. P. 37, Viceroy of Mexico, argues for extension of permission. Pp. 54-74, arguments of Manila and Seville. Pp. 130-193, renewed contest in 1731. P. 210, King grants extension permanent (1834).

Azcarraga, p. 54 *et seq.*

Documentos Inéditos, Vol. VI, p. 298, Viceroy of Peru defends Philippines; Vol. VI, p. 345, Report of Procurador of Manila.

allowed. In the early part of the 18th Century after repeated efforts an extension to 500,000 duros was obtained.[39] Confined within this limit the traffic remained up to the time when the revolution in Mexico brought it to an end.

It was not unknown to the home government that the policy pursued was crushing one port for the advantage of another but so long as Seville remained in power no rational action concerning Philippine commerce could be hoped for.[40] A change in policy gradually came after the middle of the eighteenth century when the Seville monopoly was steadily declining in royal favor.[41] Spain no longer had a silk industry to protect and the colonial trade was to an ever greater extent composed of foreign products re-exported from Spain.[42] Consequently less anxiety was felt in keeping trade confined to its former limits.

In 1765 Carlos III sent out a ship to encourage direct trade with the islands,[43] but the inhabitants of Manila far from being pleased by the prospect of a new commerce would have nothing to do with it and the ship returned with goods purchased on the King's account. Later expeditions were no better received and the communication was given up in 1783. Meanwhile, a second attempt was being made by establishing a monopoly—the Royal Philippine Co.[44] Lines of ships were to be maintained between the islands and America and Spain,[45]

[39] Alvarez de Abreu, p. 44 *et seq.*, discussion leading up to increase (1718-22) reviewed.

Zúñiga, Vol. I, p. 269-70 (1803).

Azcarraga, p. 51. Special exceptions to law noted.

[40] Azcarraga, pp. 68-9. Other economic results of exclusivism.

[41] Moses, Bernard. The seat of the monopoly was removed to Cadiz in 1718 and its privileges limited in 1728. Other ports were opened after 1765.

[42] Azcarraga, pp. 60-4. Decline of Spanish silk importation.

[43] Azcarraga, pp. 117-8.

[44] Comyn, p. 84 *et seq.*

Azcarraga, p. 114 *et seq.* Failure of the earlier attempt of 1733. See also pp. 119-41.

Zúñiga, Vol. I, p. 493 *et seq.*

[45] Recur, Carlos, Filipinas, Estudios Administrativos y Comerciales, Madrid, 1879, pp. 20-2, reviews company's privileges and the rules on trade.

but the trade from Mexico to the Philippines was to be left undisturbed, and most of the vexatious restrictions which had harrassed Philippine trade were removed. Native products were to enter Spain duty free,[46] and the Asiatic trade long carried on by Europeans under the ill concealed disguise of the Moro flag was thrown open to all nations. "For the first time European flags entered the Bay of Manila in the guise of peace and commerce." [47]

Better days seemed coming and the Company looked forward to a rapid development of the islands. But local prejudice again proved too strong. The merchants of Manila did everything in their power to hinder the new project, and it was soon evident that it was doomed to failure. After successive deficits it finally closed its accounts in 1830.[48] Meanwhile the troubles of the mother country were bringing about the abolition of many of the remaining restrictions on the colonial trade. In 1803, on account of the war in Europe, the trade with Peru was again opened [49] after a lapse of 210 years. In 1809 an English [50] house was allowed to establish itself in Manila, and in 1814, at the making [51] of peace, it was stipulated that all the colonial ports of entry should be opened to free foreign trade. Spanish America was now in revolt against the mother country, and the last Acapulco Galleon sailed in 1815 to return in 1821 in the final voyage in the trade which had been the most characteristic feature of the

[46] Arenas, Rafael Diaz, Memoria sobre el Comercio y Navegacion de las Islas Filipinas, Cadiz, 1838, p. 1, states that not till 1820 were all taxes on Philippine products in Spain removed.

[47] Azcarraga, pp. 141-2.

[48] Tornow, pp. 49-50. New regulations in Codigo de Comercio, July 15, 1833. Final settlement of Company's accounts, 1834. See also Arenas, p. 5; also Azcarraga, p. 146.

Andree, Karl, Geographie des Welthandels, Vol. II, pp. 443-8.

[49] Azcarraga, p. 143.

[50] Tornow, p. 49.

[51] Zúñiga, Vol. I, p. 265. The prohibition against foreigners was not strictly enforced in the later 18th century. Zúñiga reports foreign shopkeepers in Manila in 1803.

Azcarraga, p. 147.

Andree, p. 445.

colonial life for over two centuries. This hastened the change already begun in the character of the Philippine commerce. How long it had kept its peculiarly Asiatic cast is shown in the fact that even as late as 1818 the value [52] of exports of white birds' nests exceeded the combined value of the exports of sugar, indigo, hemp and cotton. New conditions were then introduced. The great exportations of Chinese goods to America and of silver to China and Bengal,[53] were replaced by cargoes of natural products. Silver, silks and spices, which led the list in 1810 gave way to sugar, tobacco, indigo and hemp by 1840.[54] Foreign capital came to the island and soon drove the Spanish from their last commercial stronghold —the foreign trade.[55] In 1885 Manila lost her monopoly of foreign commerce.[56] This brought a stimulus, especially to exports. Negros, for example, exported in 1856 only 760,000 lbs. of sugar, but eight years later sent abroad twenty-five times that amount—a development paralleled in other ports.[57]

Gradually modern ideas were working their way into the

[52] See tables in Tornow, p. 53 *et seq.*

[53] Azcarraga, p. 158.

Arenas, p. 4. European goods drove out Bengal goods. Rise of trade to England and the United States (1838).

[54] Crampon, Ernst, Le Commerce des Iles Philippines (in Société academique indo-chinoise, Bulletin 2° ser., t. 3, pp. 278-93. Paris, 1890, p. 279. Outlines the rapid growth of sugar, hemp and coffee exportations following the opening of commerce to the world.

[55] Andree, p. 445; also Arenas, p. 45. Not the least hindrance to trade was the multiplicity of coins in use. In 1838 there were no less than ten different pesos in use, besides various other smaller coins often debased and counterfeited.

[56] Azcarraga, p. 161, 1855 Zual, Iloilo and Zamboanga opened; Cebu 1860.

Crampon, *passim*, on effect of opening ports.

Andree, p. 445.

Arenas, p. 25 *et seq.*, describes the disadvantages of trade when Manila was the only open port (1838).

[57] Crampon, pp. 281-2: Iloilo had rapid growth after 1880.

Value of imports-exports 1880..... 549,419 piastres (Mexican).

Value of imports-exports 1881..... 4,663,379 piastres (Mexican).

Increase chiefly due to exportation of sugar directly to foreign countries instead of through Manila.

islands, making a marked contrast with the conditions in the long period of forced inaction.[58] The management of commerce was still far from modern. The petty extortions of the former period lived on in the details of the administration.[59] Especially was this true in the harbor and customs charges, which made Manila a port which all ships' masters were glad to avoid.[60] There were a hundred useless rules, against which the ship might unwittingly offend, and their violation meant the payment of heavy fines. Failure to deliver exactly the number of bales stated in the manifest was punished by a fine of 1,000 duros for each bale lacking or in excess. Arbitrary classifications of imports were made which worked injustice in the collection of duties and the port officials always had to be rendered friendly by various "gratifications."

These conditions justify the conclusion that there never was true freedom of commerce in the Philippines from the time the trade aroused the jealousy of Seville to the end of Spanish dominion. For 200 years the islands were shut off from the world at large almost as completely as if they had never been discovered.[61] They offered nothing to the colonist and only a threat to the prosperity of the mother country. The commercial policy was definitely shaped by the desire to keep the colony alive and yet to prevent any development that might conflict with home interests. From this long period of

[58] Azcarraga, pp. 17-22. Page 24, increase in public revenues resulting.

[59] Tornow, pp. 49-50; also as to cumbersome banking methods of the Banco Español Filipino, established 1581.

[60] Arenas, p. 2; restrictions on ships' papers discussed. Limitation as to destination removed 17 July, 1834.

Azcarraga, p. 148 *et seq.* Spanish ships and products favored by the customs schedules made by Juntas in 1828 and 1855. These discriminations in favor of Spanish ships were abolished December 28, 1868, but replaced 16 October, 1870.

Tornow, p. 52. Up to 1872 Spanish flag favored. In that year had a reduction of 25% of customs-house charges. After abolition of discriminations Spanish tonnage steadily declined.

Tornow, p. 34. Endless chicanery practiced by customs-house officials.

[61] Azcarraga, p. 6. Philippine affairs little noticed even in Spain up to 1860.

stagnation the revival was necessarily slow.[62] The people grown old in the endless routine of a small and isolated society, looked with distrust on any change; and advance, when it came, was brought, not through initiative from within, but through the enterprise of foreigners.

The new conditions brought problems which neither the Asiatic merchants nor the Spanish could meet and the control of foreign trade passed into the hands of the English, French and Americans.[63] The opportunities which the Spaniard had always neglected, these people turned to their own account and though constantly interfered with by an officious government, they brought to the islands a development the

[62] Alvarez de Abreu, p. 202. One-half of the Council of State declared 23 December, 1733: "The propagation of the faith is the only reason for maintaining the islands."

Blair and Robertson, Vol. XIII, p. 233. Governor to Felipe III, July, 1604; not more than 1,200 Spaniards in the islands.

Zuñiga, Vol. I, p. 259 (1803). "Spanish families, even counting those not strictly pure, do not reach over 1000." Vol. I, p. 433, describes the paralyzing effect of the Acapulco trade.

M'Konochie, Alexander, A Summary View of the Statistics and Existing Commerce of the Principal Shores of the Pacific Ocean, London, 1818, p. 127. "Permanent population of Spaniards was about 1,200" (1818).

Azcarraga, p. 25. Pure white families numbered not more than 9,000 in 1861. Page 37, effects of exclusivism upon commerce. Page 54, white population increased very little during 17th century.

[63] Zuñiga, Vol. I, p. 265 (1803). When Asiatic trade was opened to Europeans, "Swedes, Danes, English, Bostonians (*sic*), French and Armenians" monopolized it.

Comyn, pp. 89-90 (1810). North Americans (*sic*), English and French take the majority of Philippine trade, especially in liquors.

Arenas, pp. 76-77 (1838). Chief participants in importation are England, United States and China. One or two French ships a year. Almost all the products of the Philippines are exported by foreigners for the United States, England or China.

Cortez, Balbino, Estudios del Archipiélago Asiatico bajo el punto de vista, geographico, historico, agrícola, política y comercial. Madrid, 1861, p. 77. Trade to Singapore chiefly in hands of English and Germans.

Azcarraga, p. 29 (1871). "Almost all foreign commerce done . . . . . through foreign houses . . . English, North American (*sic*), German and French. Spanish commerce limited to coastwise cargo trade (cabotaje).

Tornow, pp. 50-51. Up to 1860 and later banking done almost entirely through two large American houses. "Since 1896 there has been no American house in Manila." English, Germans and Swiss most important in foreign trade in 1899 (1899).

Spaniards had considered impossible.[64] Exports exceeded imports and the native products, neglected before, became the staple articles of foreign trade. During the nineteenth century, therefore, the character of Philippine Commerce underwent a revolution, but the government failed to adjust its commercial policy to the new conditions which confronted it and to the end of Spansh Dominion continued to hamper the trade it should have been its care to foster.

[64] Zuñiga, Vol. I, pp. 271-3. Attitude of Spaniards as to development of the islands (1803).

SOME EFFECTS OF OUTLYING DEPENDENCIES UPON THE PEOPLE OF THE UNITED STATES.

BY HENRY C. MORRIS,
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A nation, in its immaturity, is prone to look only at the more apparent features of its existence; as it grows in power it views with complacency the respect paid to its prowess, the authority which it is able to enforce and the volume of commerce it maintains. By its conduct and attitude the policies of foreign states are fixed; its navy controls the seas; its army threatens its neighbors; its merchants roam through the more remote quarters of the earth; its legislators establish laws for multitudes without its borders; its ambassadors are consulted at every Court; its rulers gain the regard and affection of rival potentates and princes. How to achieve these results, so patent to the observer, forms the theme of many arguments; but how few of the people realize what obligations and effects are reciprocally imposed upon them themselves; how their development, temperament and institutions may be varied, favored or thwarted by their relations with foreign states.

In a somewhat different degree and in directions which, in various instances, have been diametrically opposite, the administration of colonial possessions has in due time affected the legislation, the morals, the tendencies and the character of every nation owning them. Can the United States, lately undertaking similar enterprises, however disguised in name, claim to be exempt from the rule? Such a question might be fairly answered in the negative. Assuming, therefore, that there will not be any exception from the usual consequences in this respect, what are some of the more general effects which the Philippines, Cuba, Porto Rico, Hawaii, Guam and Panama will exert upon the home country irrespective of their legal or constitutional relationship, as determined by the Supreme

Court, and consequently without regard to the nature of the tie by which they are bound?

Although the results respectively arising from the control of dependencies, differing in geographical situation, may in detail be widely divergent, they are in the general sense strikingly along similar lines; in each individual case emphasis may perhaps be laid on some particular feature, but the same tendency persists. Possession or authority presupposes a certain relationship and beyond the mere reasons for acquisition,—which may have been momentary, although durable in results —some cause for prevailing conditions. Heretofore there has always existed between mother country and colony some bond of sympathy; a feeling of deep interest on the part of the paramount state or its people. In every age the desire for commercial supremacy, military renown, national prestige, religious freedom and political liberty, or, conversely, escape from intellectual or physical servitude has been a moving force to colonizing effort; as one or the other has predominated, the effects have varied. Can it yet be said what motives lie at the root of American energy in distant lands? Are our people purely philanthropic? Are they mainly ambitious of extending the national domain, or are they attracted by the more sordid calculations of financial gain? To what extent are these aims fixed or changing and how far are they conscious or voluntary? In time of war and physical conflict the impulses of rulers and people are sharply defined and clearly enunciated, but after the stress and storm they inevitably become more complex and less apparent. The masses, in a large measure, lose their volition and leaving the direction of affairs more and more to those charged with their administration, they unconsciously drift as circumstances of domestic and foreign policy necessitate. A people, apparently moved in the first instance solely by aspirations for religious or political liberty, may soon fall a victim to commercial ambition or to the race for wealth; witness the example of Spain in the sixteenth century and England two hundred years later; indeed, the original economic causes for colonization have too often been disguised under the

enthusiasm of the fervent churchman or political philosopher. The mainsprings of many such movements of the past have only in recent years been properly recognized and credited with their due importance. Let us not now deceive ourselves in our own contemporaneous history, but let us rather remember that sufficient time has not yet elapsed properly to observe conditions with impartiality and completely to judge of the results. In colonial enterprises the modification of ideals is in itself one of the most characteristic effects. The United States is now apparently in a stage of transition; ten years ago few persons would have admitted that a war would be fought with a foreign power for the extension of markets for our products and manufactures; and even to-day the fact that such was the underlying cause for the conflict with Spain would be reluctantly conceded; while indeed the national consciousness of such a motive at that time can be truthfully denied, nevertheless, among the manifest results, next to the increase in area and population, the expansion of our trade relations is the most apparent.

The statistics of trade between the United States and foreign countries as given by "Commercial America in 1905," a publication prepared under the direction of O. P. Austin, Chief of the Bureau of Statistics of the Department of Commerce and Labor, show a very material growth in the volume of business transacted during the preceding ten years. When the figures for certain special localities are examined, the effects of our recent development are peculiarly evident. Considering in the first place, the trade with our newly acquired dependencies and Cuba, it appears that the imports into the United States were as follows:

	1895.	*1905.*
Philippines	$4,731,000	$12,658,000
Porto Rico	1,506,500	15,633,000
Hawaii	7,889,000	36,112,000
Total	$14,126,000	$64,403,000
Cuba	52,871,000	86,304,000
Grand total	$66,997,000	$150,707,000

On the other hand, the exports from the United States were:

	1895.	*1905.*
Philippines	$119,000	$6,200,000
Porto Rico	1,884,000	13,974,020
Hawaii	3,723,000	11,753,000
Total	$5,726,000	$31,927,000
Cuba	12,807,000	38,380,000
Grand total	$18,633,000	$70,307,000

Pursuing the inquiry still further and investigating this time the status of our trade with the two principal independent powers of the Orient, it appears that their imports into the United States have been:

	1895.	*1905.*
Chinese Empire	$20,546,000	$27,885,000
Japan	23,696,000	51,822,000
Total	$44,242,000	$79,707,000

The exports from the United States were:

	1895.	*1905.*
Chinese Empire	$3,604,000	$53,453,000
Japan	4,635,000	51,720,000
Total	$8,239,000	$105,173,000

It is apparent that our trade has not only been growing with the flag but far beyond it; nor has foreign soil formed a serious barrier to its development in other portions of the far East. Let us cite some further statistics, as for example for British and Dutch possessions; first for imports into the United States:

	1895.	*1905.*
Hong Kong	$776,500	$1,552,000
British Australia	4,621,000	11,893,000
British East Indies	21,266,000	53,690,000
Dutch East Indies	7,727,000	18,463,000

The exports for the same period from the United States:

	1895.	*1905.*
Hong Kong	$4,253,000	$10,770,000
British Australia	9,014,000	26,353,000
British East Indies	2,854,000	7,548,000
Dutch East Indies	1,147,000	1,670,000

It would therefore appear that the extension of our influence in the Pacific has not merely opened up markets under the protection of our own flag and laws, but has done infinitely more in developing the demand for our products, both on the part of independent peoples and colonists of other powers. Incidentally, it may here be noticed that the tonnage of American owned vessels on the Pacific Coast increased from 433,502 tons in 1895 to 821,710 tons in 1905. While this growth is relatively larger than that for Atlantic and Gulf ports, it is regrettable that the greater portion of this trade should still be carried in foreign bottoms.

Aside, however, from the slow growth of the merchant marine, the commercial achievements of Americans in the Orient during the last ten years may, comparatively speaking, be termed stupendous, although even yet we control only a very small share of the total trade and considerably less than under all the circumstances we should have. While of course without the consequences of the war with Spain there would have been some natural progress; while the forward movement of China and Japan would to a certain extent have drawn our attention in their direction, while perhaps, certain modifications in the tariff may have contributed somewhat to the results; while the Boer war may have crippled for a time our greatest competitor; while possibly Germany might be cited as a country the trade of which has developed without the impulse of war and prosperous colonial possessions, and while Americans might have participated in Chinese trade without sending their troops to assist in the rescue of the foreign legations at Pekin, still it is extremely doubtful if, without the stimulus inspired by the broader view of the world, gained by our military and naval experience, coupled with the acquisition of new territories, we should have accomplished any results in eastern trade comparable to those actually achieved.

The same tendency has likewise been felt nearer home; for instance, examine for a moment the course of trade with our neighbors immediately to the North and to the South. Their imports into the United States were:

	1895.	*1905.*
Mexico	$15,636,000	$46,471,000
Canada	36,574,000	62,470,000

Their exports from the United States were:

	1895.	*1905.*
Mexico	$15,006,000	$45,756,000
Canada	52,855,000	140,530,000

Throughout all the tables, next to the enormous percentage of increase, the most significant facts to be noted are the relative proportions of imports and exports in each particular group. In the case of the dependencies the imports into this country are uniformly in excess of the exports; while in other instances, the exports are usually the larger. While reference to the details of European trade, would be extraneous, it may be of interest to note that in the period of which we are speaking, the imports of Spain into the United States increased, notwithstanding the interruption occasioned by the war, from $3,575,000 to $11,654,000 in value; while the exports to that country grew from $10,927,000 to $17,038,000.

Before concluding this discussion of commercial development, it appears necessary to quote one more table summarizing the growth of our trade relations with the various grand divisions of the world.

IMPORTS INTO THE UNITED STATES.

Country.	*1895.*	*Percentage of total trade.*	*1905.*	*Percentage of total trade.*
Europe	$383,646,000	52.41	$540,773,000	48.39
North America	133,916,000	18.29	227,229,000	20.33
Asia	77,626,000	10.61	161,983,000	14.50
South America	112,167,000	15.32	150,796,000	13.49
Oceania	17,451,000	2.39	25,388,500	2.27
Africa	5,709,000	.98	11,344,000	1.02

EXPORTS FROM THE UNITED STATES.

Country.	*1895.*	*Percentage of total trade.*	*1905.*	*Percentage of total trade.*
Europe.....	$627,928,000	77.76	$1,020,973,000	67.23
North America.	108,575,000	13.45	260,570,000	17.16
Asia.....	17,325,000	2.15	128,505,000	8.46
South America.	33,526,000	4.15	56,894,000	3.75
Oceania.....	13,109,000	1.62	33,079,000	2.18
Africa.....	7,075,000	.87	18,541,000	1.22

The study of these figures is significant; while in every instance of course, there has actually been a large increase during ten years, both in imports and exports, the relative proportions of the various localities indicate striking changes highly important to us when deciding upon our attitude for the future. In both European and South American trade relative losses have been sustained; the ratio of imports from Europe in the total has declined from 52.41 per cent to 48.39 per cent; that of the exports to Europe from 77.76 to 67.23 per cent. In the case of South America the decline in imports has been from 15.32 to 13.49 per cent; in the exports, from 4.15 to 3.75 per cent. In every other instance the ratio is increasing; that of the imports of other countries of North America into the United States has risen from 18.29 to 20.33 per cent; that of the exports from the United States to them, from 13.45 to 17.16 per cent. In the Asiatic trade the increase in imports into the United States has been from 10.61 to 14.50 per cent; in exports from the United States from 2.15 to 8.46 per cent. In the trade with Oceania and Africa the respective ratio to the total is also generally larger. With these conclusions before us we should be able readily to perceive where our greatest advantage lies in building up and fostering trade relations. It certainly behooves us as a nation especially to nurture our interests in those regions where they are rapidly developing.

In discussing this subject Secretary Shaw has lately said:

"Where shall these new markets be found? The answer is easy, for there are few places possible; South America and South Africa import $650,000,000 per annum, of which the

United States contributes a paltry 12 per cent. Oriental countries import a thousand millions, of which the United States contributes only 10 per cent.

"Our manufacturing competitors know where these countries lie. They have learned their languages, have studied their desires as well as their needs, and for years have prosecuted a well-planned and well-executed campaign for their commercial invasion, and with the aid of a large merchant marine they have been successful. We scarcely know where these countries are on the map. We do not understand their languages, their habits, their needs or their desires, and we send them, all combined, less than $150,000,000 of our more than $13,000,000,000 of manufactures, and this pittance we send in foreign bottoms and beneath alien flags.

"Let no man misunderstand me," he continues. "I admire the forethought, the enterprise and the skill of our foreign competitors, and I bid them all godspeed. No prosperity can come to any country that does not gladden my heart. I am contending only that we shall emulate their enterprise and enter these markets with American ships laden with goods especially designed to meet the desires of the people as distinguished from our conception of what they ought to have. Every day we delay hastens the day when our surplus will set back upon us like a belated tide, to the inundation and swamping of our prosperity, which is now our boast." Such is Secretary Shaw's opinion.

The most deplorable feature in the commercial situation of the nation for many years has been and still is, the weakness of the merchant marine. The people of the United States long ago lost and have well-nigh forgotten their early glory as a sea-faring race. At one time they carried ninety per cent of their exports in their own ships; now they control only nine per cent and allow the other ninety-one per cent to be delivered at their destination by foreign craft. Secretary Root in a recent speech at Kansas City, before the Trans-Mississippi Congress, in explaining the reasons for this condition, well said:

"1. The higher wages and the greater cost of maintenance of American officers and crews make it impossible to compete on

equal terms with foreign ships. The scale of living and the scale of pay of American sailors is fixed by the standard of wages and of living in the United States, and these are maintained at a high level by the protective tariff. The moment the American passes beyond the limits of his country and engages in ocean transportation he comes into competition with the lower foreign scale of wages and of living.

"2. The principal maritime nations of the world, anxious to develop their trade, to promote their ship-building industry, to have at hand transports and auxiliary cruisers in case of war, are fostering their steamship lines by the payment of subsidies. Against these advantages of his competitor the American shipowner has to contend. And it is manifest that the subsidized ship can afford to carry freight at cost for a long enough period to drive him out of business. We are living in a world not of natural competition, but of subsidized competition. State aid to steamship lines is as much a part of the commercial system of our day as state employment of consuls to promote business. Plainly these disadvantages created by governmental action can be neutralized only by governmental action, and should be neutralized by such action."

Upon the same occasion the distinguished Secretary of the Treasury likewise said:

"If this country ever develops international merchants it will accomplish it by granting them encouragement, not alone by dredging harbors and deepening channels, but by assuring them a merchant marine in which to carry, under most favorable terms, the products of our farms, our mines, our forests and our factories. And without international merchants sustained by a merchant marine we will never put these products into the ports of countries unable to maintain merchant ships with which to come after them.

"A fraction of the amount, $465,000,000, spent in the last decade on the Isthmian Canal, on rivers and harbors, in aid of shipping and on the revenue-cutter service would give us what we once had," Secretary Shaw concluded,—"a merchant marine —and assure us international merchants. The products of our ever-increasing labor would then be carried where the United States as a commercial country is now unknown."

The President himself in his last message strongly urges the passage of the ship-subsidy bill now pending in Congress. To those who have the welfare of our oversea possessions at heart, the subject must be of deep and abiding interest. The requirements of colonial commerce will, without doubt, enlist and train up a body of seamen peculiarly adapted to it; the ordinary development incidental to the progress of our outlying territories will in time give a renewed impulse to the American merchant marine, while on the other hand, with its rapid and regular expansion the prosperity of these regions is intimately associated. Whatever method therefore may eventually be adopted for the purpose, the restoration of a proper share of the ocean carrying trade to the flag is of paramount importance.

Contemporaneously with the extension of our commerce, we are slowly preparing to work out a new economic system. With the control of the fiscal regulations, both for producer and consumer in our hands it has been discovered,—at least by those who are sufficiently enlightened to recognize the fact—that arbitrary rules will not change the natural course of trade; that where we wish to sell, we must buy; that if we would buy we must not surround ourselves with artificial barriers which restrict the egress of our own goods as much as the ingress of colonial products. We are gradually learning that the admission of the staple products of the dependencies upon the markets of this country inevitably promotes the prosperity of their producers, renders them better able to care for themselves, reduces our expenditures on their behalf, increases the sales of our own merchandise to them and especially, above every other consideration, fosters a more friendly feeling on their part toward us. This discussion indeed would scarcely be complete without a suggestion of the breach, which will probably be made in our tariff doctrines by the exigencies of colonial trade; coincident with this tendency will undoubtedly be the competition which certain existing monopolies will meet. On the other hand, the cheapness of labor in the dependencies is likely to impair the higher rate of wages at home and seriously to endanger the existence of labor organizations.

Whether results of such an opposite character in the social order will be unequivocally beneficial to the community cannot yet be foretold.

Another condition, purely financial, can be anticipated, if it has not already been experienced; so long at least as a dependency is in a large measure undeveloped, considerable sums of money necessarily flow to it; the needs of the government alone for administrative purposes do not limit the amount. Commercial, agricultural, educational and philanthropic enterprises draw their funds from the parent state and to the extent of their requirements reduce the resources available for domestic and other purposes. In some degree the United States is now feeling the effects of the demands which the Philippines, Cuba and Hawaii are directly or indirectly making upon its currency. Granting even that the appropriations in the budgets of the dependencies are covered by local taxation, there are several millions of American capital engaged in private colonial investments. How much has been diverted from circulation abroad and what surplus, if any, is naturally seeking an outlet from the country are perhaps open questions.

Upon this subject Secretary Root says:

"Since the first election of President McKinley the people of the United States have accumulated for the first time a surplus of capital beyond the requirements of internal development. We have paid our debts to Europe and have become a creditor instead of a debtor nation. We have faced about.

"Our surplus energy is beginning to look beyond our own borders, throughout the world, to find opportunity for the profitable use of our surplus capital, foreign markets for our manufactures, foreign mines to be deveolped, foreign bridges, railroads and public works to be built, foreign rivers to be turned into electric power and light."

Basing our conclusions upon this authoritative statement of the facts, can there be any doubt that such an excess is preferably and more safely invested under the protection of our own flag and laws in such opportunities as the dependencies

afford, than if it were subjected to the uncertainties of alien sovereignty and legislation?

The American people who solved its difficulties with the aborigines by their practical annihilation and endeavored on the other hand to settle the negro question by elevating the blacks to its own level, is again confronted in the Philippines by a race problem, the more serious as it is the more complex. Shall we, in this instance, annihilate the natives of the soil or eventually raise them politically and intellectually to our standards? The first solution by reason of their numbers is not probable; is the latter possible? Has not our experience with an inferior race of the East already shaken our ideal of the potential equality of all men? Has not the experiment—so far very brief but still likely long to endure,—had a reflex action on our attitude toward the negro? Have not the enthusiasm and ardor of ante-bellum and civil war days for his political, social and educational equality,—so greatly cooled in the succeeding forty years—been seriously chilled by the events occurring during the last decade in the Pacific and nearer at home in the Gulf of Mexico? While every effort should be made to grant equal justice to all citizens, irrespective of color or race and all should have our deepest sympathy and profound assistance in their struggles and aspirations, such questions may well and reasonably be propounded and their ultimate answers confided to the men of a subsequent generation.

What influence, if any, it may also well be asked, will the control of races in the dependencies have upon our theories of government and their application to our domestic affairs? At the time of the Revolution the inhabitants of the thirteen colonies were chiefly of European origin. With the exception of the negro factor, the growth of which precipitated the problems of the Civil War, the influx of individuals of alien race—I do not mean nationality—has, throughout our history been slight; as a people we have been homogeneous. Indeed the fear of contamination is evidenced by the laws against miscegenation and in its most patent form by the Chinese exclusion act; but now in the Philippines, the task

of absorbing into our body politic and social many tribes of Malay blood is imposed. Admitting the eventual adoption of a form of control beneficial to them, will not our own views of government ultimately be modified, even perhaps involuntarily, by contact with them. In the organization of our colonial administration we have, naturally, followed a course peculiar to ourselves; in general, we have disregarded the methods elsewhere in force and devised our own system. Whether or not the results already achieved are satisfactory is not here at issue, except in so far as experience shall hereafter cause a change. The idea of government by legislative control has prevailed; the affairs of a dependency in the tropics have for once been placed under the direction of a commission directly subject in turn to the action of an elective body several thousand miles away. In the ultimate reservation of power to Congress, in which the inhabitants of the Philippines have no representation and irrespective of constitutional limitations, we are challenging failure, such as Spain met in South America and Cuba, and Great Britain at an earlier date encountered in the American colonies. Should success be achieved, we shall, as a nation, have demonstrated greater capacity for colonial administration than any of our predecessors. The existence of such misgivings nevertheless, does not necessarily imply the establishment of an Insular Legislature, either of the type of that which is about to be inaugurated in the Philippines or to which a practically independent form of government shall be granted; they rather involve a change in our own point of view; the withdrawal from or renunciation by Congress of the greater part of its authority; the creation of a special colonial office; the transfer of the executive power in the islands from a body of men with divided obligations to a single individual charged with the highest degree of responsibility and aided by a select council. But in arriving at this solution our ideals of popular government, as heretofore cherished, would be grievously shattered. Such a revulsion of sentiment might readily effect a reaction at home; so that not only in Asia, but likewise in America, unexpected but not irrational application might be made.

Long before any such radical change takes place, the influence of the returning thousands of our soldiers and sailors will be felt. The experience gained by them will naturally broaden the scope of their observation; knowledge of the wider field of military and naval achievement cannot fail to impart to their friends at home a higher regard for the larger interests of the country. Any local or petty differences will be reconciled in the effort to promote the national welfare. These considerations will inevitably tend to a stronger centralization of authority in the hands of the Federal Administration. The possibility of a conflict with a friendly power because of some state school law or the jeopardizing of millions of property on account of sectional prejudice against the yellow race, will be removed when the national jurisdiction over such matters is not defied. A deeper study of foreign institutions will show that our own views are not always indisputably correct; not only in the executive but likewise in the judicial branch similar effects will be noticed. With the growth of litigation involving interests in the dependencies, attention will more and more be paid to precedents of alien origin and to this extent the rules laid down by the Courts will draw their doctrines from the broader principles of fundamental equity which partake of an international character. Through Cuba, the Philippines and Porto Rico, a stronger tinge of Spanish law will be imparted to our jurisprudence. Such changes, far from being detrimental, must inevitably impress us with a more liberal conception of our duties as a nation.

The United States has, within eight years, advanced with giant strides, for it the era of isolation is closed; its people have begun to take a lively part in the wider interests of humanity; its opinion on a vast variety of subjects has been expressed, welcomed and respected by the great powers of which it has suddenly become one. With the acquisition of dependencies the nation has not only been brought face to face with problems purely incidental to them, but it has likewise learned that the assumption of these obligations involves as a necessary correlary, manifold duties toward other states.

While its fleets operate on the farther waters of the Western Sea, its statesmen and diplomats do not forget to confer and debate with their contemporaries to the East of the Atlantic. And here emphasis may well be laid upon the transition of which we have lately been witnesses; the step which, coincident with the opening of the twentieth century, will probably mark the advent of a ne wage. As the mediæval era was finally closed with the frequent navigation of the Atlantic by Europeans, so another epoch terminated when the United States and Japan began to compete for the mastery of the Pacific. The scepter of power then passed from the shores of the Mediterranean; so now the Eastern fringe of the Atlantic is apparently destined soon to lose its supremacy; for the United States at least the outlook is toward the Occident. If in council the nations of Europe still rule, the field of action lies in Asia; the East has become the West.

One of the most important doctrines of American policy, it is felt by many, is jeopardized by the expansion of American interests. The Monroe Doctrine as well as the protective tariff, our distinguished fellow-citizen Professor John W. Burgess considers doomed to annihilation. In his address at the University of Berlin last October he said:

> "There are, for instance, two tenets which have almost come to be looked upon as sacred as articles of faith in American politics the abandonment of which no outside power could even dare to hint at without danger of arousing the enmity of the Union. I refer to the protective tariff and the Monroe Doctrine.
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> "Our politicians seem not to have the slightest appreciation of the fact that both these political tenets have almost got to be antiquated, that the political, geographical and constitutional changes among the powers of Europe, as well as the assumption by the United States of its place as a world-power, have rendered both almost meaningless."

May it not well be questioned whether our policy will be changed to the extent that Professor Burgess seems to anticipate? Of the other nations, those the more deeply interested in similar problems of expansion have sufficient work to do for coming centuries. If in the past we have barred the en-

try of European states to the American Continent, we have, on the other hand, repeatedly manifested our good faith and disinterestedness in disavowing any intention whatever to extend our own sovereignty. There has been no cause for jealousy or envy. With all due regard to the possibilities of our future growth as a nation in strength and authority, there is not any apparent reason why we should abandon the faith of our fathers. While maintaining indeed the authority of the Monroe Doctrine in its application to Central and South America, it is likely that we shall formulate some analogous theory of non-intervention in the affairs of the Pacific. The older policy may well be extended in principle so as to apply to the new and wider conditions of our national life.

While always taking pride in our peace-loving disposition, we Americans have fought bloody conflicts and won great triumphs at arms; even now, while planning the construction of the most powerful battleships and an increase in military armament—both the inevitable consequences of widely scattered possessions—we are ready to submit our contentions with foreign powers to an international tribunal and are participating both in South America and in the North of Europe in the deliberations of conferences designed to minimize the chances of war and to relieve such conflicts, when they occur, of their worst horrors. Without our outlying dependencies would these discussions have had the same interest for us? In our broader relationships with other states, in our wider view of humanity, in the development of more liberal policies,—especially in commercial connections—and in the newly created outlets for our energies, both in military and civil life, the control of dependencies is working in our national fabric innumerable moral, social, intellectual, economic and political changes. Some influences are undoubtedly beneficial, others may be detrimental. It behooves us, therefore, as a people by introspection and reflection carefully to observe and study these phenomena; while we weigh and examine them let us not forget the fate of other nations! The discussion of the effects of outlying dependencies upon people of the United States, their institutions and policies is, therefore, peculiarly appropriate at this time.

ON THE NEED FOR A SCIENTIFIC STUDY OF COLONIAL ADMINISTRATION.

BY ALLEYNE IRELAND, F. R. G. S.,
AUTHOR OF "TROPICAL COLONIZATION," "THE FAR EASTERN TROPICS," ETC.

Those who have had occasion to make a special study of colonial affairs cannot have failed to observe that the subject of colonial administration is one which is assuming from year to year a higher degree of importance, and is drawing to itself a constantly increasing share of public attention.

This access of interest in a branch of investigation hitherto very generally regarded as a curious by-product rather than as a vital part of Political Science, has served the useful purpose of disclosing to the student in this neglected field the failure of the great majority of recent writers to approach the colonial problem in that scientific spirit which in other departments of study is alone held to justify a public expression of opinion.

Indeed, so wide is the range of occupations which have added their followers to the ranks of writers upon colonial government—a range which embraces lawyers, doctors, soldiers, sailors, politicians, presidential candidates, ministers of the gospel, labor leaders, poets, geologists, engineers, and professors of subjects as wide apart as ethics and zoology—that one is almost tempted to believe that a knowledge of calligraphy is regarded as the only qualification necessary for a writer on colonial topics.

It would be impossible to exaggerate the injury which has been done to the cause of a scientific study of colonial administration by the torrent of ignorant and often violently prejudiced writing which has in recent years flooded the periodical press of this country and overflowed into the book stores. Not only has the public mind become saturated with misinformation, but the easy confidence with which uninformed writers have handled the most difficult administrative prob-

lems has fostered the idea that the political principles and social ideals of the North American continent afford a perfectly satisfactory standard by which to adjust the administrative policy for the governance of tropical races.

I propose in this address to examine some of the fallacies which have vitiated the greater portion of the recent literature of colonization, and to suggest certain general principles for the regulation of serious inquiry in the future. I consider myself fortunate in that my views are to be laid before a body which is at once capable of weighing whatever force may lie in my argument, of detecting any errors into which I may have fallen, and of lending to such portion of my opinion as it may accept an authority which it would be alike presumptuous and futile to claim for an individual view.

Before proceeding further I may say that throughout this address I use the word "colony" and its derivatives to express that degree of administrative and political dependence which is found only in tropical and sub-tropical areas where the mass of the population is of a different race from that of the sovereign nation. There is in fact no problem of colonial administration in the great self-governing colonies, where the population is preponderatingly white, since the administration of such territories is in the hands of elected legislatures and differs only in name from the administration of countries which are independent sovereign states.

That fallacy which more than any other has introduced a serious element of confusion into the discussion of colonial affairs in this country—a fallacy which has permeated the literary expression of the anti-imperialist movement—is the inclusion within one series of premises of matter bearing upon several perfectly distinct and entirely different questions; that is to say upon the question as to whether there is any moral justification for the subjection of one race under the rule of another; the question as to whether such subjection is in conformity with the Constitution of the United States; the question as to whether, if the act of subjection is morally justifiable in theory and is also constitutional, the probability of misgovernment of the subjected race is not great enough to

over-ride the theoretical permissibility of the relation; and finally the question as to whether any advantage is likely to accrue to the sovereign state from its control of dependencies.

The separate discussion of these subjects would furnish us with a great deal of interesting and valuable material; and each question is probably susceptible of an elucidation which would effect to the satisfaction of serious students a final disposition of the points raised. But the confusion of these issues has produced a dialectic of colonization utterly false and worthless, and has obscured the vital fact that the four matters for determination belong respectively to the distinct domains of morals, law, administration and economics.

If this confounding of principles were the only serious defect in recent utterances on the subject of colonization the results would be sufficiently deplorable; but as a matter of fact it has very commonly been the case that where writers have avoided a confusion of categories they have fallen into the error of seeking to determine the moral equation of colonization by an inductive process from observed results instead of by a deductive method from the first principles of morals and of ethics.

Thus the morality of colonization has been made to depend upon the character of the effects which race subjection has produced in various instances. This has resulted in the formation of two schools of opinion, one maintaining the morality of colonization on the ground that the results are generally favorable to the subject race, the other condemning its immorality because the results are generally unfavorable; and we find writers of distinction who change from one principle to the other as the progression of their information brings into view facts favorable or otherwise in regard to the effect of colonial government upon subject races.

Let me refer to a single instance of this kind of thing. In an address before the American Historical Association in 1901 Mr. Charles Francis Adams said " What is true of India is true of Egypt. Schools, roads, irrigation, law and order, and protection from attack, she has them all—

'But what avail the plow or sail,
Or land or life, if freedom fail.'

"A formidable proposition, I state it without limitations, meaning to challenge contradiction, I submit that there is not an instance in all recorded history . . . . where a so-called inferior race or community has been elevated in its character . . . . through a condition of dependency or tutelage."

In 1906, in an article entitled "Reflex Light from Africa" which appeared in the Century Magazine for May, Mr. Charles Francis Adams says: "One thing seems clear, without being reduced to servitude, the inferior race must be recognized as such, and, in some way, so dealt with. Until subject to British domination, the Soudan, and Uganda also, were internal hells and external nuisances; and as they then were, time out of mind they had been. One has but to read Baker's account of the conditions which prevailed in that region anterior to 1890 to appreciate the utter fallacy of the theoretical rights-of-man and philanthropical African-and-brother doctrines. In plain vernacular English, they are all 'rot';—'rot' which I myself have indulged in to a considerable extent, and, in face of observable facts which would not down, have had to outgrow. . . . . The British policy as seen in operation in Egypt may be,—I believe it is,—a great discovery,—a veritable advance in human polity. . . . . As for British rule in the Soudan and Uganda, it dates only from 1898. That thus far it has been one of unmixed beneficence, I bear witness."

To the student of colonial administration Mr. Adams' frank abandonment of his former views is less remarkable than the unshaken confidence with which for many years he expressed those earlier opinions which as soon as he made any practical study of the subject he was forced to disavow.

There is indeed a school of thought which has formulated what is in fact a real principle in regard to the colonial relation; and this principle is that the worst possible form of self-government, however disastrous and oppressive its operation, is a moral phenomenon; and that the best possible form

of dependent government, whatever its advantages for the dependent race, is an immoral phenomenon.

Now although I believe this principle to be utterly false in substance, it has at least the form of a scientific theory, for it does not seek to furnish a moral axiom depending for its morality upon the observed results of its own operation, but views all facts from the standpoint of a single great hypothesis, namely that the ultimate regeneration of humanity can be effected only by the extension of self-government.

To those holding this view the idea of self-government is the major premise of every syllogism of a sociological schema, and bears to their investigations just the same relation as the law of gravitation bears to the investigations of the astronomer or the atomic theory to those of the chemist.

In point of form this is just as it should be, for it is clear that the morality of the principle involved in colonial subjection cannot be judged by the results of a colonial policy, the rightness or wrongness of the principle being necessarily inherent and entirely apart from and prior to its application.

If this were not so, and the morality of the principle were made to depend upon the effects of its application, there could exist side by side two moral principles relating to the same matter and in complete conflict with one another. To put the matter in a word, the morality of the colonial relation cannot be affirmed from any number of instances in which that relation can be shown to have achieved beneficent results for the dependent race, nor can its immorality be predicated from a history of oppression and tyranny. If the morality of colonization is to be determined it can only be done by viewing the subject from the standpoint of some great hypothesis, such, for instance, as the right of the world as a whole to enjoy the natural resources of the whole earth.

But this very method of judging by results, which is false and unscientific when applied to the moral principle of colonization, is precisely the method which must be followed when the subject under investigation is an applied science of colonial administration, for in such an inquiry it must be determined at the outset what those objects are with the attain-

ment of which colonial administration is concerned; the examination of methods must follow, and it is only by finding out how far these methods have in practice produced the desired results that a code of administrative principles can be formulated.

There has been a great lack of frankness amongst writers on colonial affairs, in Europe as well as in this country, as to the motives which lead the great powers to maintain dependencies in tropical and sub-tropical countries.

The attitude of those who say "We have gone to this barbarous country in order to uplift the native, to confer on him the blessings of Christianity, to civilize him, and to make his burden light" is only a degree less foolish than that of those who say "We have gone to this fertile and rich territory for the wicked purpose of developing its resources, and as our only object is wealth we can succeed only by oppressing the native, by cheating him, and by subjecting him to the horrors of a cruel and tyrannical administration.

The plain fact is that, with the exception of the Brookes in Sarawak, no one has ever undertaken the administration of a dependency from simple motives of pure benevolence towards the natives. The object of colonization in the tropics is and always has been, with the exception I have noted, to establish and develop a profitable commerce. That this is in itself a perfectly legitimate purpose and one which, if carried out by humane methods, is compatible with a general improvement in the condition of the natives, can hardly be disputed.

If we accept commerce as being the mainspring of tropical colonization it becomes a very simple matter to establish certain standards which may be used for the purpose of comparing with one another various systems of colonial administration.

Broadly speaking, it may be said that there are two active principles from which two totally different methods of colonization derive their main characteristics—one is the principle of development, the other the principle of exploitation.

The character of a colonial administration which is concerned with the development of a country is almost always

beneficent, for it rests upon the assumption that in the long run the best commerce may be established if the native population is prosperous and contented, if the country is gradually responding to a scientific utilization of its resources, and if the trade is so conducted as to yield a fair share of its benefits to the native.

Where exploitation alone is the aim of the administration the character of the foreign rule is sure to be oppressive and will in all probability be barbarous and inhuman. The difference of method which follows the adoption of one or another of these principles of development or exploitation is due to a perfectly simple cause, namely that where the aim is development the sovereign power has the strongest possible motives for securing a progressive improvement in the territory and in its people, whereas if exploitation alone is desired the authorities devote themselves to getting as much as possible out of the country in the shortest possible time, regardless of the permanent injury that may be done to the true interests of the territory.

Not a little confusion has arisen in recent discussions of colonial affairs through the failure to perceive the radical difference between a policy of development and one of exploitation. My attention was particularly directed to this confusion of ideas when I was in the Philippine Islands in 1904. I then found that everybody who approached the Government with proposals for starting various industries—offering to introduce capital into the Islands and to afford employment to the people at fair rates of remuneration—was told that the American Government did not propose to have people come along and exploit the Philippine Islands.

We may, I think, lay down the principle that the great test of any system of colonial administration is the degree to which it serves the end of a peaceful development of the resources of the territory with which it is concerned; and that that system is best which insures fair treatment for the native, economy in the conduct of public affairs, and the general betterment of the social conditions of the people.

This brings the discussion to a point where it is possible

to present some suggestions in regard to the scientific study of colonial administration, and it is necessary before going further to determine whether the purpose of such study is to be essentially one of historical research or whether its chief aim is to be the practical solution of such problems as arise when persons of one race are administering, with a definite object, the affairs of another race.

In order to emphasize the radical difference between these two objects and the wide divergence of the roads which must be traveled in their pursuit it is only necessary to observe that if the purpose is historical the element of comparison will be introduced into the inquiry on the basis of a broad range of time in a narrow field, whereas if the investigation is directed toward the practical end to which I have referred the comparison of phenomena will be made as far as possible within a narrow range of time and in a broad field.

Upon the selection of one or another of these guiding motives must depend the form which the investigation is to assume.

In so far as there has been any serious study of colonial administration amongst English-speaking people it has until recently assumed almost entirely the historic form. There are plenty of books dealing historically with the administration of one or another of the British dependencies—from many hundreds of such works I may mention Chesney's "Indian Polity" and Rodway's "History of British Guiana" as typical of the kind of books I have in mind.

But works on colonial administration as such, that is to say works dealing with colonial administration as a science and not as one aspect of local colonial history, are extremely rare. Excluding some half-dozen books by living writers I doubt if there are in the English language a dozen volumes on the science of colonial administration. It would indicate unusual research if one should add to the names of Smith, Brougham, Merivale, Wakefield, and Lewis. Even the works of these writers are, with few exceptions, to be classed rather as contributions to our knowledge of colonial policy and colonial constitutions than of colonial administration.

Without wishing in any way to belittle the importance of the local historical treatment of colonial administration I cannot help feeling that more than enough has been done along that line to supply any demand which has yet arisen or is likely to arise, and that there is urgent need for a scientific study of colonial administration as a practical matter in which the leading nations of the world have a very serious interest.

If it is accepted that the object of the inquiry is to discover the best means of dealing with the problems which face those nations which have undertaken the administration of territories in a state of political and administrative dependence it is not difficult to define the scope of the investigation; and the question of methods of study presents no peculiar complications.

The limits set to this paper compel me to confine my attention to one aspect of this study; and I will therefore select what seems to me to be by far the most important consideration to be held in view by students, namely that no amount of intensive research in one dependency can lend any weight to an opinion on the science of colonial administration. It is by comparative work alone that any useful view of the subject can be obtained, for it is clear that the utility of any study of colonial administration must depend ultimately upon the comparison of methods and results in colonies in which the general conditions, social, climatic, and economic, are sufficiently similar to admit of measurement by a single standard or set of standards.

When this principle is adopted, a survey of the whole colonial field will at once suggest to the student that the colonies fall into natural groups which lend themselves readily to the comparative method of study. Thus there is a West Indian group, which may properly include the colonies on the mainland of South America; an East Indian group, which embraces the Indo-Malayan and Indo-Chinese colonies; a West African group, an East African group, and so on. The Indian Peninsula forms a group by itself and furnishes within itself material for a fascinating investigation.

I do not mean to imply that the general conditions in any

of these groups are identical in each member of the group but simply that in certain fundamentals there is a vastly greater difference between the members of one group and another than between members of the same group.

Thus India is cut off from all other groups by its vast area, its enormous population, the variability of its climate, and by its peculiar social institutions, whereas Burma and the Philippine Islands fall into one group because apart from difference of religion there are no great points of divergence which invalidate comparisons between the two territories.

There is a further point of great importance which places India in a category by itself. In any of the other groups which I have enumerated the interest of the student will be fixed upon the observation of widely different methods of administration applied to territories which in a general way have much in common. For instance in the East Indian group there is a fairly close similarity between the Philippine Islands, Java, the Malay Peninsula, French Indo-China and Burma. Yet in these countries we find a great variety of administrative systems—the Crown Colony system, Chartered Company Government, Independent Government, the Residential system, the Indian Provincial system, and the less easily defined methods of the French, the Dutch, and the Americans.

In India the character of the problem is exactly reversed, for here we find under one central administration territories as widely separated by every consideration of race and climate as the Punjab and the Madras Presidency, presenting differences as great as those existing between Russia and Portugal.

It is seen at once that what enables us to deal with India as a group is the general similarity of the administrative methods operating in a varied field, and that the group cohesion in what I have called the East Indian group depends upon the similarity of the general conditions under which a great variety of administrative systems operate.

The point which I wish to make is that for the purposes of a scientific study of colonial administration it is neces-

sary to so divide the material that there is either a comparison of the results of different methods applied to broadly identical problems, or a comparison of the results of broadly identical methods in widely different circumstances.

It is the general failure to preserve one common element—either the method or the condition to be met—that has made a vast amount of recent writing on colonial administration little better than waste paper.

Perhaps the best example which can be cited of this absence of nexus is the common attempt to define the political future of the Philippines in the terms of Japanese achievement.

There is one point which I think I should deal with before I bring this paper to a close and that is to answer the question, which is constantly being urged upon the public, why, if trade is the chief object of colonization, cannot the native be left to rule his own country after his own fashion and the foreigner content himself with the commerce?

In elucidation of this point I may quote a few paragraphs from a paper which I read last year before the Royal Colonial Institute in London.

"If we go far enough back in the history of the world we may, no doubt, reach a time when it might of truth be said of every State that it had a right to its own bad government. But in order to find a period in which this proposition would hold it is necessary to go at least as far back as the time when the whole of human society was in its tribal stage, when each community was self-supporting, and was independent, alike in the matter of supplies and markets, of all other communities—in a word, to a time when navigation and international trade had not created a wider relation than that of individuals within an isolated clan.

"From the moment when international commerce had its beginnings the question of the character of governments ceased to be a purely internal concern of each State, for there then arose a general obligation, based upon obvious considerations of expediency, that no country should maintain a government so greatly inferior to the best type known at the period as to threaten the existence of the international trade.

"There are very few conditions to which commerce cannot adjust itself. It may be disturbed by the operation of tariffs; it may be seriously affected by the insidious working of bounties on production; it feels the effects of great strikes; it is most sensitive to the influence of climate; but to those elements and to others of a similar character commerce adjusts itself by means of fluctuating prices, by the flow of capital from one country to another, and from one industry to another, and by a hundred other inner workings of its system.

"It is, however, of the utmost importance to realize that there are two conditions to the absence of which commerce cannot adjust itself—two conditions which are absolutely essential to the existence of any great commerce at the present day; one is reasonable protection of life and property, and the other is the presence in every important trade area of competent and impartial courts for the adjustment of commercial disputes and for the enforcement of contracts.

"Now these two conditions, without which modern commerce cannot exist, are precisely the conditions which native rule in the tropics never afforded; and it is ultimately to this cause that we must trace the substitution of European for native methods of administration throughout the heat belt."

The great variety of administrative methods which have been adopted by the European powers and by the United States in their various dependencies and the varying degree of success and failure which has attended their application is the material to which the student must turn if he wishes to embark upon a scientific study of colonial administration.

DISCUSSION.

POULTNEY BIGELOW, taking up the theme of Alleyne Ireland rather than the paper for which he had been booked, dwelt upon the importance of preparing the ground for scientific treatment of colonial questions.

On many vital points, said the speaker, public opinion in the United States is opposed to measures advocated by such practical students of colonial life as Mr. Ireland.

It is only necessary to mention our attitude towards missionaries, colored races, contract labor, free trade, to discover for ourselves that many matters most elementary from the point of view of the colonist become very complex when dealt with by a statesman in Washington.

Hence the great importance to this country of an impartial tribunal on colonial affairs before whom might come questions of fact regarding colonial matters.

For instance, our Philippine possessions are reported by our salaried officials as presenting a picture of progress and content.

On the other hand, a student like Mr. Ireland, who has other standards than those of Michigan or Ohio, finds them deplorable. Only an authority such as these allied societies could erect would be in a position to decide such a question to the satisfaction of the public.

Again at Panama we are spending many millions, and are creating a condition of things suggesting the worst phase of French mismanagement rather than a work of which this nation could be proud.

My own experience at the Isthmus covered but two visits—one of six weeks, the other of two days.

It is possible that what I saw and heard was fallacious. It may have done injustice to many gentlemen drawing salaries in connection with a magnificent job. My opportunities for judging were of course limited, and I wish to submit my statements to the sharpest revision at the hands of my fellow-seekers after truth.

The Administration at Washington has pronounced, through many costly reports, that the work there is admirable and that all who differ from this opinion are unpatriotic and malicious.

Personally I walk through a swamp which Mr. Roosevelt sees in time of flood and declares to be a magnificent reservoir. Who am I that I should have an opinion other than my President's?

Therefore the more important that such matters be settled by a committee of our scientific societies who shall represent no other interest than love of truth.

Such a tribunal would immediately command national respect, and rank only second to that of the Hague in determining matters of the first importance.

Personally I am an "Imperialist"—if that means that it is our duty to bring happiness and prosperity to several overheated sections of the earth that have become ours since the war of 1898. I believe that the task is within our power provided that we approach it, not as politicians, but practical students of the truth.

THE QUESTION OF TERMINOLOGY.

BY ALPHEUS H. SNOW.

Mr. President, Members of the Association and Section, Ladies and Gentlemen:

You have heard ably discussed certain questions which arise out of the relationship between the American Union and the annexed Insular regions, viewed in its sociological and economic aspect. I now ask your attention to a question of immediate interest and importance growing out of this relationship viewed in its political, that is to say, its legal aspect. This question, which the Committee on Arrangements has called "The Question of Terminology," is: What are the correct terms to use in describing the political and legal relationship between the American Union and its distant annexed regions, assuming that this relationship is to be permanent and is to be on terms which are just to all parties?

More specifically, the question which I shall discuss will be, whether we, as Americans, ought, according to American principles, to use, in our political and legal language, the terms "colony," "dependence," and "empire," or whether we ought, according to those principles, to substitute for the term "colony," the term "free state," for "dependence," "just connection," and for "empire", "union."

It is needless to say that I shall accept the decisions of the Supreme Court of the United States as final in regard to all the matters adjudicated in them. But the Supreme Court has jurisdiction only for the purpose of determining the rights of individuals. The political relations between the Union and the Insular regions, it determines only so far as may be necessary to ascertain individual rights. Its present doctrine—that the American Union has power over the Insular regions subject to "fundamental principles formulated in the Constitution," or subject to "the applicable provisions of the Constitution," protects the civil rights of individuals, but under it the

power of the Union for political purposes remains absolute. The proposition which I shall offer for your judgment, will, I believe, not only not be in conflict with the proposition laid down by the Supreme Court, but will give a reason why they are right. It will, too, I believe, give a reasonable basis for our holding that the power of the American Union over the Insular regions, while ample for the maintenance of a just and proper permanent relationship with them under our control, is not absolute even as respects their political rights.

I have said that I shall discuss this question upon American principles. I shall not base myself on the Constitution of the United States, though I shall try to show the relation of that document to the question, as I understand it. I shall assume it to be settled by the decisions of the Supreme Court,—as it seems clearly to be—that with the exception of the "Territory" clause of that instrument, it is, and of right ought to be, the Constitution of the thirteen original States of he American Union and of the other States which they have admitted into their Union, and of no other States or communities; and that therefore it does not extend of its own force outside the American Union in any constitutional or legal sense, but only in a metaphorical sense—this being as I understand it, the meaning of the Court when they hold, as they do, that, though the "Territory clause" is of present and universal significance as respects all the regions annexed to the Union, yet, with this exception, only "the applicable provisions of the Constitution" or "the fundamental principles formulated in the Constitution" are in force in the annexed regions. "Extensions," so-called, of the Constitution by Act of Congress, are of course mere Acts of Congress, and whether such metaphorical "extensions" are permanent will depend upon the terms and conditions of the "extension."

But though I shall not base myself on the Constitution of the United States, I shall nevertheless base myself on a great American document, which preceded the Constitution as a statement of American principles, and which is so far from being inconsistent with it that the Democratic party, in its platform of 1900, called it "the Spirit of the Constitution"—

I refer to the Declaration of Independence. It is the American principles set forth in that document which I shall try to discover. If I shall be adjudged to have rightly interpreted that instrument, it will follow that we ought to substitute, in our political and legal language, for the term "colony," the term "free state," for "dependence," "just connection," and for "empire," "union." In making such substitution, however, it will be necessary to give to the terms "free state" and "union," a scientific meaning which will differ from that which they now have in the popular mind, but which will, I believe, be the same as was given to these terms by the Revolutionary statesmen.

I shall not allow myself to be embarrassed by the fact that in my first published writing I used the terms "colony," "dependence" and "empire;" for at the same time that I used these terms, I based myself on principles which were those of free statehood, just connection and union, to which I adhere to this day.

Taking the Declaration of Independence, therefore, as the exposition of the fundamental principles on which all American political theory is based, and to which all American policy must conform, let me state briefly the general meaning and purpose of this instrument, as I understand it.

As a result of the discussion for twelve years preceding the Declaration, the doctrine of the extension of the British Constitution to the American Colonies, which from their situation, could never be represented on equal terms in Parliament, was found to be useless for the protection of American rights, political or civil; and the doctrine that their rights were dependent on the Colonial Charters was found to be inadequate, for these Charters, while protecting the civil rights of the Americans to some extent, proceeded on the theory that they held all their political rights at the will or whim of Great Britain. The Americans felt and knew that they were entitled to political, as well as civil rights, and they all firmly believed that each so-called "colony" was a free state and subject to no external control beyond what was necessary to preserve their relationship with Great Britain on just terms to all the parties.

The only question which the Americans discussed, as soon as they comprehended the whole situation, was, Why was each so-called "colony" a free state and why had it always been such? The Declaration of Independence, as I understand it, gave to the world their solution of this problem. Their answer, as I understand it, was, that the American Colonies were and always had been free states, because their relations with the State of Great Britain were not under the British Constitution and were not wholly under the Colonial Charters, but were under a supreme and universal common law, which governs the relations between men, communities, bodies corporate, states and nations, and which they called in the Declaration "the Law of Nature and of Nature's God," according to which every community on the earth's surface, within reasonable limits for the formation and execution of a just public sentiment, is entitled to be a free state,—that is, to be free from external control, in executing its just public sentiment, except so far as may be necessary to enable it to conform to the terms of its just connections with other free states. This doctrine of free statehood as a universal right is, as I understand it, the central idea of the Declaration.

Assuming this to be the central idea, let us see how this idea is reached; and for that purpose, let us notice the exact language of the Declaration. The first paragraph reads:

"When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation."

The "causes of separation" are prefaced by a number of propositions determining the nature of the "political bands" by which one people may be "connected with" another. These propositions are all rules of human conduct, and are therefore principles of law, though they are called "self-evident truths." This part of the Declaration reads:

"We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness."

The conception of the universal right of free statehood is reached, in the Declaration, through a series of three propositions, each stated to be self-evident, and yet all forming a sequence. The basal proposition is, that "all men are created equal." Rufus Choate and John James Ingalls have declared this proposition and the succeeding one that "all men are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness," to be "glittering generalities." Abraham Lincoln, on the other hand, in his speech at Gettysburg, at the most solemn and stirring moment in the country's history, declared that the proposition that all men are created equal was the foundation-idea of the nation, to which it was dedicated by the Fathers.

The doctrine of equality arising from the common creation of all men as the spiritual offspring of a common Creator, was the doctrine of the Reformation in its broadest form, as declared by Penn. Taking into consideration the religious character of the Americans, as well as the learning and acumen of that most remarkable body of men who constituted the Continental Congress, it seems not only not improbable, but probable, and indeed necessary to conclude, that the proposition that "all men are created equal" was intended to be the epitome of the doctrine of the Reformation, as that doctrine was broadened by the influence of Penn and his followers. As the Governments of Europe were at that time acting on the political philosophy of feudalism and medievalism, which in its last analysis was based on the proposition that all men are

created unequal, or that some are created equal and some unequal, the Declaration, if it be true that it based the American political philosophy upon the broadest doctrine of the Reformation, announced an American System as opposed to the European System.

From the doctrine of equality arising from the common creation of all men by a personal Creator to whom all were equally related, it is declared by the Declaration to follow as a "self-evident" truth that there are certain rights, which are attached to all men by endowment of the Creator as being the correlative of the unalienable needs of all men, and which inasmuch as they arise from the universal limitations which the Creator has imposed, are as unalienable as the needs themselves. These unalienable rights are declared to be the rights of life, liberty and the pursuit of happiness.

The doctrine of unalienable rights, necessarily supposes a universal law, for the conception of law must precede the conception of right. This law, as conceived of by the Declaration is a common and universal law. In the first part of the preamble this universal common law is spoken of as "the law of Nature and of Nature's God." Inasmuch as the rights claimed are those which depend for their existence upon revelation as well as reason, it is evident that this common and universal law to which the Declaration appeals, is the "law of nature and of nations," of the scholars of the Reformation, which was conceived of as based on revelation and reason, and as governing every relationship of men, of bodies corporate, of communities, of states and of nations. Out of this conception there had already grown that great division of the law which deals with the temporary relations between independent states, which we now call International Law.

Having thus established the doctrine of unalienable rights, based on a universal common law of nature and of nations, which all men, all bodies corporate, all communities, all governments, all states and all nations were bound to enforce, the Declaration proceeds to a consideration of the forms, methods and instrumentalities by which these unalienable rights are to be secured.

It declares that the primary instrumentality by which these rights are secured, are governments "deriving their just powers from the consent of the governed." Contrary to the usual interpretation, the Declaration does not state that government is the expression of the will of the majority. Governments, it is declared, are instituted to "secure" the "unalienable rights" of individuals. The will of the majority, of course, is quite as likely to destroy as to secure the unalienable rights of individuals. Moreover, the Declaration says merely that "governments are instituted among men"—not that men universally institute their own governments. The whole statement that the governments which are instituted among men to secure the unalienable rights of individuals, universally "derive their just powers from the consent of the governed," is inconsistent with the proposition that governments are the expression of the mere will of the majority, for it is only their "just powers" that governments "derive" from "the consent of the governed," and the will of the majority may be just or unjust. The expression "deriving their just powers from the consent of the governed" seems to me most probably to be an epitome and summary of the two fundamental propositions of the law of agency—"*Obligatio mandati consensu contrahentium consistit*, a free translation of which is "The powers of an agent are derived from the consent of the contracting parties," and *Rei turpis nullum mandatum est*, a free translation of which is "No agent can have unjust powers." On this interpretation the meaning of the whole sentence "that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed," is, it would seem, that there is a universal right of all communities to have a government of a kind best adapted for the securing of the unalienable rights of individuals, instituted either by their own selection or by the appointment of an external power, and that all governments, however instituted, are universally the agents of the governed to secure these rights. Government is thus declared not to be the expression of the will of the majority, but the application of the just public sentiment justly ascertained through forms best adapted for this purpose.

The free statehood which is claimed in the concluding part of the Declaration to be the right of the Colonies is by the Declaration based on the philosophical declarations of the preamble. The particular proposition which bears upon the right of free statehood is evidently the one which declares that, "to secure these [unalienable] rights [of individuals], governments are instituted among men, deriving their just powers from the consent of the governed." The intermediate propositions, as the result of which the universal right of free statehood follows from this proposition, are, it would seem, these: If government is the doing of justice according to public sentiment, government is the expression and application of a spiritually and intellectually educated public sentiment, since, although a rudimentary knowledge of what is just is implanted in every human being, a full knowledge of what is just comes only after a course of spiritual and intellectual education. Hence it follows that the forms and methods of government should be such as are adapted to such spiritual and intellectual education. Education takes place by direct personal contact, and can be best accomplished only through the establishment of permanent groups of individuals who are all under the same conditions. The formation and expression of a just public sentiment, therefore, requires the establishment of permanent groups of persons, more or less free from any external control which interferes with their rightful action, under a leadership which makes for their spiritual and intellectual education in justice. Such permanent groups within territorial limits of suitable size for developing and expressing a just public sentiment, are free states. Territorial divisions of persons set apart for the purpose of convenience in determining the local public sentiment, regardless of its justness or unjustness, are not states, but are mere voting-districts. Just public sentiment, for its expression and application, requires the existence of many small free states, disconnected to the extent necessary to enable each to be free from all improper external control in educating itself in the ways of justice; mere public sentiment, for its expression and application, requires only the existence of a few great states

divided into voting-districts, each district being under the control of the Central Government, which is to it an external control. Just public sentiment, as the basis of government, is a basis which makes government a mighty instrument for spirituality and growth; mere public sentiment, regardless of its justness or unjustness, as the basis of government, is a basis which makes government a mighty instrument for brutality and deterioration. Human equality, unalienable rights, government according to just public sentiment, and free statehood, are inevitably and forever linked together as reciprocal cause and effect.

The ultimate meaning of the expression "that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed," seems therefore to be that by the common law of nature and of nations there is a universal right of free statehood which pertains to all communities on the face of the earth within territorial limits of suitable size for the development and operation of a just public sentiment.

So complete and universal are the principles of government by just public sentiment and of free statehood that, according to the Declaration, even when all the people of a free state are meeting together to alter or abolish a form of government which has become destructive of the ends of its institution, as it is declared they may rightfully do, their right to form a new government is not absolute so that they can rightfully do whatever the majority wills, but is limited by this universal common law, so that they can rightfully institute only a new form of government whose foundation principles and mode of organization are such "as to them shall seem most likely to effect their safety and happiness"—that is, to secure the unalienable rights of individuals to life, liberty and the pursuit of happiness.

The declaration of the universal right of free statehood is accompanied, in the Declaration, by the claim that the Colonies, as free states, had always been in political "connection" with the State of Great Britain. The concluding part of the Declaration reads:

"We, therefore, ... declare that these United Colonies are, and of right ought to be, free and independent states, ... and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved."

In this it was necessarily implied that the Colonies had always been free states or free and independent states, and that, by the Declaration, at most their right of independent statehood came into existence; that they had theretofore at all times been in political connection, either as free states under the law of nature and of nations, or as free and independent states by implied treaty, with the free and independent State of Great Britain; that the dissolution of the connection had not come about by an act of secession on their part, but was due to the violation, by the State of Great Britain, either of the law of nature and of nations, or of the implied treaty on which the political connection was based.

The term "connection" was an apt term to express a relationship of equality and dignity. "Connection" implies two things, considered as units distinct from one another, which are bound together by a connecting medium. Just connection implies free statehood in all the communities connected. Union is a form of connection in which the connected free states are consolidated into a unity for the common purposes, though separate for local purposes. Merger is the fusion of two or more free states into a single unitary state. Connection between free states may be through a legislative medium, or through a justiciary medium, or through an executive medium. The connecting medium may be a person, a body corporate, or a state. States connected through a legislative medium, whether a person, a body corporate or a state, and whether wholly external to the states connected or to some extent internal to them, whose legislative powers are unlimited or which determines the limits of its own legislative powers, are "dependent" upon or "subject" to the will of the legislative medium. Such states are "dependencies," "dominions," "subject-states," or more accurately "slave-states,"—or more accurately still, not states at all, but mere

aggregations of slave-individuals. States connected through a legislative medium, whether a person, a body corporate or a state, and whether wholly external to the states connected or in part internal to them, whose legislative powers are granted by the states and which has only such legislative powers as are granted, are in a condition of limited dependence, dominion, and subjection; but their relationship is by their voluntary act and they may, and by the terms of the grant always do to some extent control the legislative will to which they are subject and on which they are dependent. Where states are connected or united through a justiciary medium, whether that justiciary medium is a person, a body corporate, or a state, all the states are free states, their relationships being governed by law. Where states are connected through an executive medium, whether that executive medium is a person, a body corporate, or a state, all the states are free and independent states, and each acts according to its will. All connections in which the legislative medium,—whether a person, a body corporate or a state, and whether wholly external to the states connected, or to some extent internal to the states connected,—has unlimited legislative powers or determines the limits of its own legislative powers, are fictitious connections, the relationship being really one which implies "empire" or "dominion" on one side, and "subjection" or "dependence" on the other. Such connections are properly called "empires" or "dominions." So also all connections in which the only connecting medium is a common executive, whether a person, a body corporate or a state, are fictitious connections, the relationship being one of "permanent alliance" or "confederation" between independent states. Such connections are properly called "alliances" or "confederations." The only true connections are those in which there is a legislative medium, whether a person, a body corporate or a state, whose legislative powers are limited, by agreement of the connected states, to the common purposes, and those in which there is a justiciary medium, whether a person, a body corporate, or a state, which recognizes its powers as limited to the common purposes by the law of nature and of nations, and which as-

certains and applies this law, incidentally adjudicating, according to this law, the limits of its own jurisdiction. Just connections tend to become unions, it being found in practice necessary, for the preservation of the connection in due order, that the power of limited legislation for the common purposes and the power of adjudicating and applying the law for the common purposes should extend not only to the states, but to all individuals throughout the states.

Thus " dependence," as a fictitious and vicious form of connection, is, it would appear, forever opposed to " connection " of a just and proper kind. If it were attempted to sum up the issue of the American Revolution in an epigram, would not that epigram be: " ' Colony,' or ' Free State?' ' Dependence,' or ' Just Connection?' ' Empire,' or ' Union '?"

According to the opinion of the Revolutionary statesmen, as it would seem, a universal right of free statehood does not imply a universal right of self-government. Statehood and self-government are two different and distinct conceptions. The Americans claimed the right of free statehood as a part of the universal rights of man, but they claimed the right of self-government because they were Englishmen trained by generations of experience in the art of self-governmnt and so capable of exercising the art. A state is not less or more a free state because it has self-government. It is a free state when its just public sentiment is to any extent ascertained and executed by its government,—however that government may be instituted,—free from the control of any external power. It does not prevent a region from being a free state that its government is wholly or partly appointed by an external power, if that government is free from external control in ascertaining and executing the just local sentiment to any extent. Nor does it interfere with the right of free statehood when an external power stands by merely to see that the local government ascertains and executes the just local sentiment to a proper extent. The external power in that case is upholding the free statehood of the region. It stands as surety for the continuance of free statehood.

The right of self-government, according to this view, is a

conditional universal right of free states. When a community, inhabiting a region of such territorial extent that it is not too large to make it possible for a just public sentiment concerning its affairs to be developed and executed, and not so small as to make it inconvenient that it should be in any respect free from external control, is of such moral and intellectual capacity that it can form and execute a just public sentiment concerning its internal affairs and its relations with other communities, states and nations, it has not only the right of free statehood,—that is, of political personality,—which is of universal right, but also the right of self-government. The right of such a free state to self-government is complete if there be no just political connection or union between it and other free states, or partial, if such a just connection or union exists, being limited, in this latter case, to the extent necessary for the preservation, in due order, of the connection or union.

Independence was regarded apparently also, by the Declaration, when it declared the Colonies to be "free and independent states," to be a right superadded to the right of free statehood in some cases, and therefore to be a conditional universal right of free states—that is, a right universally existing where the conditions necessary to independence — great physical strength, and great moral and intellectual ability—exist.

The Colonies regarded themselves as free states in such a just and rightful connection with the free and independent State of Great Britain as to form with it a union. From this it followed, inasmuch as this connection and union was conceived of as existing under a universal common law, that the State of Great Britain, through its Government, was the justiciary medium which connected the free states of that which they conceived of as the British-American Union, and as such applied the principles of this universal common law for preserving and maintaining in due order the connection and union. There, therefore, resulted the conception of Great Britain as what may perhaps be called "the Justiciar State" of this British-American Union. If we were to use the exact language of the Revolution, it would probably be more proper

to speak of Great Britain as "the Superintending State" of the British-American Union, as the power of Great Britain over the Colonies was generally spoken of by the Americans as "the superintending power." Lord Chatham used this expression in his famous bill introduced in the House of Lords. The expression "Justiciar State," however, seems to be more scientifically correct. A Justiciar was an official who exercised the power of government in a judicial manner. His power was neither strictly legislative, nor strictly executive, nor strictly judicial, but was complex, being compounded of all three powers, so that his executive action, taken after judicially ascertaining the facts in each case and applying to them just principles of law, resulted in action having the force of legislation.

The Revolutionary statesmen have left a very considerable literature showing their views concerning the nature of the right of a state to be the Justiciar State of a Union of States, and concerning the powers which a Justiciar State may rightfully exercise.

Arguing on the same basis as that adopted by them regarding the right of self-government and independence, it appears that they considered the right of a state to act as Justiciar for other states to be a right superadded to the right of self-government and independence in some cases—that is, that justiciarship is a conditional universal right of self-governing and independent states, the conditions necessary to its existence being great physical strength, a judicial character and a capacity for leadership.

The power exercised by a Justiciar State in a Justiciary Union, they recognized as being neither strictly legislative, nor strictly executive, nor strictly judicial, but a power compounded of all these three powers. They considered that it was to be exercised for the common purposes after investigation by judicial methods; that the just public sentiment of the free states connected and united with the Justiciar State was to be considered by it in the determination of the common affairs; and that the action of the Justiciar State was to result, after proper hearing of the free states and all parties con-

cerned, in dispositions and regulations made according to just principles of law, which were to have the force of supreme law in each of the connected and united free states respectively. This kind of power, which the Fathers called "the superintending power" or "the disposing power" under the law of nature and of nations, and which may be called, using an expression now coming into use, "the power of final decision," or more briefly "the justiciary power," being neither legislative, executive nor judicial, but more nearly executive than legislative, the more conservative among them considered might be exercised, consistently with the principles of the law of nature and of nations, either by the Legislative Assembly of the Justiciar State or by its Chief Executive, advised by properly constituted Administrative Tribunals or Councils; the action of the Legislative Assembly superseding that of the Chief Executive in so far as they might be inconsistent with each other. This right of both the Legislative Assembly and of the Chief Executive, properly advised, to exercise the powers of the Justiciar State—the former having supreme, and the latter superior justiciary power,—under the law of nature and of nations, is, I believe, also recognized by our Constitution, as I have elsewhere attempted to show.

Of course there must be conditions of transition where the relations between free states which would normally be in union, or between detached portions of what would normally be a unitary state, temporarily assume a form which is partly one of union or merger, and partly of dependency. The justification of all such forms of relationship must, it would seem, be found in the fundamental right which every independent state, whether a justiciar state or not, has to the preservation of its existence and its leadership or judgeship—that is, in the right of self-preservation, which, when necessary to be invoked, overrules all other rights. On this theory must, it would seem, be explained the relations between the American Union and its Territories, between Germany and Alsace-Lorraine, and between England and Ireland. On this theory of self-preservation, also, must, it would seem, be explained the permanent relationship of dependency which exists between

the District of Columbia and the American Union—such dependency being necessary to the preservation of the life of the Union.

Out of the conception of a universal common law of nature and of nations which governs all human acts and relationships, —and therefore all the acts and relationships of states and nations as well as of men, bodies corporate and communities, —there has arisen and at the present time exists, a science of the universal and common law of the state, called the Science of the Law of the State, which concerns itself with the internal relations of a state to its people, its bodies corporate and its communities, and a science of the universal and common law of independent states, called the Science of International Law, which concerns itself with the occasional and temperoray relations of independent states. The great field of law which concerns the permanent relations of free states is not yet covered by a recognized science. Must there not therefore emerge from this conception of a universal and common law of nature and of nations, a third science of law, covering this field, which will take as its basal proposition the doctrine that free statehood is the normal and rightful condition of all communities on the earth's surface within suitable limits for the formation of a just public sentiment, and which will concern itself with the permanent relations between free states? As such permanent relations must always be by just connection, either in its simple form or in the form of union, may not such a science of law, standing between the science of the Law of the State and the science of International Law, be called the science of the Law of Connections and Unions of Free States?

Taking the whole Declaration together, and reading it in the light of the political literature which was put forth on both sides of the water between the year 1764 and 1776, it seems to be necessary to conclude that the views of the most conservative of the American statesmen of the period concerning the connection between Great Britain and the Colonies were these:

They considered, as I interpret their language, that the connection between the free and independent State of Great Britain,

and the American Colonies, as free states, had existed and of right ought to have existed, according to the principles of the law of nature and of nations—that law being based on principles opposed to the principles applied by the governments of Europe, and being thus what may be called a law of nature and of nations according to the American System. Had they used a more definite and scientific phraseology, it seems that their view would best be expressed by saying that they considered that the relationship between Great Britain and the Colonies had always existed according to the principles of the Law of Connections and Unions of Free States. They accordingly admitted, as I understand them, that Great Britain, as a free and independent state, had power, as Justiciar, over the American Free States, for the common purposes of the whole Union, to finally decide, by dispositions, ordinances and regulations having the force of supreme law, made through its Government after a judicial hearing in each case for the investigation of facts and the application to them of the principles of the Law of Connections and Unions of Free States, upon all questions of common interest arising out of the connection and union; and that each of the American Free States had power, through its Legislature, to legislate according to the just public sentiment in each, and the right to have its local laws executed by its Executive and interpreted and applied by its Courts, free from all control by the State of Great Britain, except what was necessary to protect and preserve the Union.

In this view, the actions of the Americans show the evolution of a continuous theory and policy, and the application of a single American system of principles,—a system which was based upon free statehood, just connection and union. The British-American Union of 1763 was a Union of States under the State of Great Britain as Justiciar, that State having power to dispose of and make all rules and regulations respecting the connected and united free states, needful to protect and preserve the connection and union, according to the principles of the Law of Connections and Unions. The dissolution of this Union, caused by the violation by the State of

Great Britain of its duties as Justiciar State, gave a great impetus to the extreme states'-rights party, and the next connection formed,—that of 1778 under he Articles of Confederation,—was not a Union, the Common Government (the Congress) being merely a Chief Executive. Such a connection proving to be so slight as to be little more than a fiction, they formed, under the Constitution of 1787, the only other kind of a union which appears to be practicable, namely, a union under a common government which was a Chief Legislature for all the connected and United States by their express grant, and whose powers were expressly limited, by limitation in the grant, to the common purposes of the whole connection and union of free states.

If the Constitution, in defining what are the common purposes of the Union and what the local purposes of the States of the Union, is declaratory of the principles of the Law of Connections and Unions of Free States, as it seems not unreasonable to hold, the Limited Legislative Union formed under the Constitution may perhaps be considered, in view of the supremacy of the Judiciary, as Guardians of the Constitution, over the Limited Legislature, as a species of Justiciary Union.

Moreover, if in what has been said we are correct, the relationship at present existing between the American Union and the Insular regions, is that of *de facto* Justiciary Union, and the American Congress, under the lead of President McKinley and President Roosevelt, has acted, with reference to these regions, according to the principles of the American System. The American Union, through President McKinley, has declared itself to be "a liberating, not a conquering nation," and has recognized the people of Hawaii, Porto Rico and the Philippines as each having a separate and local citizenship, thus recognizing each of these regions as a *de facto* free state connected with the American Union. The action of the American Union extends to the regulation of the action of individuals in these free States, so that a Greater American Union of Free States exists *de facto*. To bring into existence a Greater American Union *de jure*, it needs, first, the public and express recognition by the American Union of itself as

the Justiciar State, and of each of the separate Insular regions within proper territorial limits, as a Free State in just connection and union with the American Union; and, secondly, the establishment by the American Union of the necessary Advisory Council for investigating facts and for advising the President before he, on behalf of the American Union as Justiciar State, exercises his superior justiciary powers, and for advising the Congress before it, in the same behalf, exercises its supreme justiciary powers. Councils suitable for advising the local Governors, when they, on behalf of the American Union as Justiciar State, exercise their inferior justiciary powers, already exist. Of such a Greater American Union, the present American Union would be the Supreme Justiciary Head, with power to finally determine the questions arising out of the relationship, not by edict founded on will and force, but by decision carefully made in each case after ascertaining the facts in each case and applying to them the principles of the Law of Connections and Unions properly applicable to them.

Is not this theory the true *via media?* The theory of the automatic extension of the constitution of a state over its annexed insular, transmarine and transterranean regions which from their local or other circumstances can never equally participate in the institution and operation of its government, in some cases protects individual rights, but it takes no account of the right of free statehood, which is the prime instrumentality for securing these rights. The theory of a power over these regions not regulated by a supreme law, is a theory of absolute power over both individuals and communities in these regions,—a theory which implies an absence of all rights. The theory of a power over these regions based on the principles of the Law of Connections and Unions, granting that this law is itself based on the right of human equality, protects the rights of persons, of communities, of states and of nations. On this theory the "Territory Clause" of the Constitution recognizes the Law of Connections and Unions as determining the relationship between the American Union and the Insular regions—"needful" rules and regulations being those

which are adapted to accomplish the end desired and which are consistent with the principles of the Law of Connections and Unions as declared in the Declaration of Independence. On this theory, the doctrine of the Supreme Court that the civil rights of individuals in cases growing out of our relations with our Insular brethren are protected by "the fundamental principles formulated in the Constitution," or by "the applicable provisions of the Constitution," is translated into the doctrine that these individual and civil rights are protected by the principles of the Law of Connections and Unions of Free States, as these principles are formulated in the Constitution and as they are disclosed by an examination of the applicable provisions of the Constitution, and that not only are these civil rights protected by this law, but also the political rights of all the parties to the relationship. On this theory, the jurisdiction of the Supreme Court continues to be exactly the same as at present. The necessary Advisory Councils for ascertaining the just political relations between the American Union and the Insular regions and for determining the political rights growing out of that relationship, would not in the least interfere with the Supreme Court in the exercise of its functions. They would supplement that Court, which now protects the civil rights of all concerned through its adjudications in civil cases, by assisting the Congress and the President to protect and preserve the political rights of all concerned through dispositions and needful rules and regulations in political cases.

By adopting this theory of the Reformation and the American Revolution, may not the American System extend indefinitely without danger to America herself? There would be no domination, no subjection. The same Law of Connections and Unions would extend over and govern throughout the whole Greater American Union. This Greater American Justiciary Union would be but a logical application of the principles underlying the American Legislative, Executive and Judicial Union formed by the Constitution of the United States.

It would not be the Constitution which would follow the

flag into the regions which America has annexed to herself, but the Law of Connections and Unions, which is a part of the Law of Nature and of Nations according to the American System.

I recur, therefore, to my first proposition and submit to your judgment whether the terms "colony," "dependence," and "empire," on the one hand, and the terms "free state," "just connection," and "union," on the other, are not the symbols of two great and fundamentally opposed systems of politics—the one European, and the other American; whether the American terms and the American System are not capable of being applied universally and beneficently, in the way pointed out above, throughout all places outside the present Union which are within the limits of its justiciary power; and whether, if they are capable of this application, it is not our duty, both logically and ethically, to use the American terms in describing the relations between us and our Insular brethren, applying at the same time the principles of the American System, and thus calling into existence a Greater American Union.

COMMERCIAL RELATIONS BETWEEN DEPENDENCIES AND THE GOVERNING COUNTRY.

BY O. P. AUSTIN,

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Commerce is in most cases the mainspring of the relationship between colonies and the governing country. Say what we may of benevolent assimilation and the government of colonies for the good of the governed, there can be no doubt that commerce has been and is the underlying motive in the acquisition and continued control of a large proportion of the world's area now known as colonies, dependencies, or protectorates. In a few cases, like our own Philippine Islands, the control of territory has been assumed as a necessary result of war waged for purposes other than territorial acquisition; but the expectation of commercial advantages, present or prospective, may be properly assigned as a leading cause for the control which a half-dozen temperate-zone nations now exercise over 25 million square miles of non-contiguous territory occupied by 500 million people, a territory lying largely within the Tropics and a people largely of habits different from those of the governing country.

This last mentioned fact, that the area controlled as colonies, dependencies, or protectorates has in most cases a climate different from that of the governing country and a people of different habits of life, suggests the primary cause of the commercial, and perhaps the political relationship which now exists. The temperate zone has found itself in need of the products of the Tropics, and at the same time the vitality resulting from climatic conditions has given to its people the vigor with which to originate and apply forms of government and methods of development not induced by the climatic conditions of the Tropics. These two conditions working together—the instinctive need of temperate zone man for tropical products, and the ability to govern and develop,—have resulted

in extending his control over a very large proportion of the tropical world. While in a few cases this control has extended to certain sections of the temperate zone, a large proportion of the area known as colonies, dependencies, or protectorates lies in the tropical world, and the interchange of articles of commerce between the governing country in the temperate zone and the governed country in the Tropics is a natural one and a natural result of the climatic relation of the two sections and peoples.

Practically all of the tropical area of the world, except that of continental America, is governed from the temperate zone, thousands of miles distant from the section over which the government is applied, and with the single exception of Canada, New Zealand, and a narrow fringe of South Australia, no temperate zone area of consequence is governed as a colony, dependency, or protectorate. These natural conditions and the interchange which comes naturally between the two climatic sections of the world—the temperate zone and the Tropics—makes commerce between the colonies located in the Tropics and the governing countries located in the temperate zone the prime element of, and factor in the relationship existing between them, and a principal cause which, perhaps unconsciously in many cases, led to the establishment of such relationship. Nations seldom take up as a mere act of philanthropy the government and development of peoples distant from them and belonging to peoples widely different from their own, while the control of noncontiguous and distant territory is a source of weakness, at least in time of war. As a result, we must look to commerce and commercial possibilities as the most important of the underlying motives which have resulted in the government of two-fifths of the world's land area containing 500 million people by countries located in other parts of the world and having in most cases a population and climatic conditions widely different from those of the governing country.

For the transportation and development of commerce international and otherwise, there have been constructed in the world's colonies nearly 100,000 miles of railroad

at a cost of several billions of dollars, much of which has been supplied from the governing country, though in most cases these investments and their final return are guaranteed by the local governments in the colonies; and this contribution of billions of dollars to transportation and consequent development of commerce in the colonies is another evidence of the importance of commerce in the inter-relationship of the governed and governing people.

The foreign, or international commerce of the great area known as colonies, dependencies, or protectorates now aggregates about four billion dollars, or about one-sixth of the international commerce of the entire world. About 45% of this four billion dollars' worth of international trade of the colonies is conducted with the governing country. In the case of imports into the colonies, about 46% is drawn from the governing country, and in the case of exports from the colonies about 42% is sent to the governing country. While these percentages hold good with reference to the grand total of commerce as a whole, or of imports and exports separately considered, the share of trade with the various countries varies greatly when individual countries and individual systems of trade and tariff relationship are considered. It is to an examination of the conditions contributing to this control or lack of control of the commerce of the colony that this study is addressed. When it is considered that the colonies, dependencies and protectorates of the world number nearly 150 and that each has its own peculiar form of government and inter-relation, commercial and otherwise, with the governing country and with other colonies belonging to that country, it is obvious that a detailed discussion of these conditions one by one is quite out of the question in the limits of a paper of this character, and that they can only be considered by great groups and general principles as applied to groups of colonies and inter-relationship with the governing country.

Several important factors enter into the question of trade relationship between the colony and the governing country, and while that of tariff regulations may be most important in determining the share of the trade which accrues to the

governing country, there are other causes, such as facilities for transportation, close financial relationship, and the presence in the colony of trade representatives from the governing country.

The world's colonies, or dependencies of whatever name, may be divided into five principal groups, those controlled, respectively, by Great Britain, France, Netherlands, Germany, and the United States. Portugal and Italy have also certain colonial areas, but not yet sufficiently developed to require consideration at the present moment; and the great Kongo country in Africa, although in fact a dependency of Belgium, is not so, at the present moment in name, and therefore need not be considered in this discussion. In the case of the British colonies trade relationship with the mother country is chiefly a result of the presence in the colony of representatives of the industries and commerce of the governing country, coupled with plentiful transportation facilities and the strongly marked trade instinct which pertains to the English people. In the case of the French colonies the control of trade has been largely accomplished through the application in both the colony and the mother country of tariffs levied upon the products of other nations, but permitting free interchange of articles of commerce between the colonies and the mother country; and this system characterizes the trade relations between the United States and a large part of its noncontiguous territory. In the case of Netherlands, the share of the trade of the colonies enjoyed by the mother country has been maintained largely through rigid control of methods of production, trade and transportation in the colony and between the colony and the governing country. In the case of Germany the commerce of the areas controlled as colonies, protectorates or dependencies is as yet small and its relation to the governing country is determined largely through the transportation facilities which that country supplies and the regulation of traffic consequent upon the semi-military methods by which these undeveloped areas are now governed, and this general rule applies also to the trade relationship of Portugal and Italy with their colonies or other dependencies, and of Belgium in its relation to the Kongo country.

Considering the great groups of colonies or dependencies controlled by the various countries, it may be said that the imports of the British colonies amount to about 1,450 million dollars annually, and that about 40% of the imports is from the mother country; while the exports amount to about 1,500 million dollars, of which about 37% is sent to the mother country. In the case of France, the imports of the colonies are about 165 million dollars per annum, of which about 64% is from the mother country, and the exports amount to 140 millions, of which 57% is sent to the governing country. In the case of the Netherlands the imports of the colonies are a little less than 100 million dollars per annum and about 75% is drawn from the governing country, while of the exports, amounting to about 120 millions, about 50% is sent to the governing country. In the case of the United States, the combined imports of the various noncontiguous areas which it governs are about 75 million dollars per annum, and the percentage supplied by the United States ranges from 80% down to 20%; while of the exports of these various areas, aggregating about 100 million dollars, about 75% is sent to the United States. Of the total imports of the world's colonies as a whole, aggregating nearly 2 billions of dollars, about 900 millions, or approximately 45%, is drawn from the mother country; and of the exports, which also aggregate nearly 2 billions, about 800 millions, or approximately 40%, is sent to the governing country.

This control of the trade of the colonies is, as already intimated, accomplished largely through tariff relationship in the countries in which the large share is drawn from the mother country. How much this fact may have been responsible for the recent expressions in Great Britain in favor of somewhat similar relations with the British colonies or with the actual legislation in her English-speaking colonies in favor of trade with the mother country, must be of course a matter of opinion. It is at least a fact that a vigorous and apparently growing sentiment has developed in Great Britain in favor of a general tariff which shall make higher rates against foreign countries than against the colonies and dependencies, and that

most of the English speaking colonies and dependencies have already enacted tariffs which give decided advantages to products of the mother country seeking to enter their markets. In the case of Canada, dutiable merchandise from the mother country is granted a reduction of one-third in the established rates of duty and this privilege is also extended to those of the British colonies which give similar tariff advantages to merchandise coming from Canada. In the case of New Zealand, the same result is obtained through a law which levies upon merchandise from foreign countries 50% more than that coming from Great Britain and the colonies. In the case of the South African Custom Union, which includes most of the British colonies and dependencies in South Africa, the tariff on British merchandise is about 20% lower than that on merchandise from foreign countries. In the case of the new Commonwealth of Australia, it is expected that the tariff laws when finally adjusted and put into operation, will give to merchandise from the United Kingdom advantages quite similar to those already in operation in Canada and New Zealand. In the other British colonies, located chiefly in the Tropics and occupied by a population different in character from that of the English speaking colonies, there are few if any cases in which the tariff offers specific advantages to merchandise from the mother country.

In the case of France, the tariff of the governing country is extended to the more important of her colonies and the door opened for a free interchange of merchandise between the colony and the mother country, except that merchandise from the colony is subject in the mother country to the same excise or internal revenue taxation that is applied to that produced at home. This tariff relationship applies in general terms to the most important of the French colonies, including Algeria, French Indo-China, and certain of the colonies on the west coast of Africa.

In the case of the Netherlands, there is no discrimination in the colonies in favor of merchandise from the mother country or in the mother country in favor of merchandise from the colonies; but the rigid methods by which the colonies

have been developed, especially those in the Orient,—methods which have excluded foreigners from ownership of real estate and practically excluded them from large enterprises of development or commerce, have retained the control of the trade chiefly in the hands of representatives of the governing country and retained for the Netherlands about 75% of the imports of her colonies, while their exports have been about equally divided between the mother country and other parts of the world.

In the case of the United States, the existing tariff has been extended to Porto Rico and the Hawaiian Islands, which are now customs districts of the United States, thus permitting absolute freedom of interchange between those islands and continental United States; and this is also true with reference to Alaska, which has been, since it developed a commerce, a customs district of the United States. All of these customs districts,—Alaska, the Hawaiian Islands, and Porto Rico—enjoy the same freedom of interchange with any part of the United States that does merchandise passing between any of the customs districts of the mainland. In the case of the Philippine Islands, merchandise therefrom entering the United States pays at present 75% of the rates of duty collected upon merchandise from foreign countries; while in the Philippine Islands, merchandise from the United States pays the same rates of duties as those collected on merchandise from foreign countries. A bill which passed the House of Representatives in the first session of the last Congress and proposed to admit free of duty all products of the Philippine Islands except sugar, rice and tobacco, which are required to pay 25% of the existing rates charged against foreign countries, and also provided that at the expiration of the 10-year period following the treaty with Spain merchandise from the United States should be admitted free of duty into the Philippine Islands, but it failed to get action in the Senate.

As a result, largely at least, of the absence of tariff duties on merchandise passing between the United States and Porto Rico, Hawaii and Alaska, a very large percentage of the

merchandise entering those various territories is from the United States, and a very large proportion of their products is sent to the United States. Of the merchandise entering Porto Rico, about 84% is from the United States, and of that entering the Hawaiian Islands, about 80%, while about 83½% of the shipments from Porto Rico and 99% of those from Hawaii are sent to the United States. In the case of the Philippine Islands, about 19% of their imports is from the United States and about 48% of the exports is to the United States.

As to the effect of these systems by which the trade of the colonies with the mother country is sought to be controlled by tariff laws.

In the case of France, the share of the imports of the colonies drawn from the mother country is now, as already indicated, about 64% and has steadily increased under the application of the system for a free interchange between the mother country and the colonies, having averaged in the period from 1887 to 1891 about 57%, in 1896, 61%, and in 1904, 64%.

In the case of the British colonies, which have given to merchandise from the mother country a tariff advantage over that from foreign countries, it is not yet possible to fully determine the effect as to the share which the mother country supplies of the imports of those colonies. In the case of Canada the system was adopted in a progressive form in 1897 and applied in the full degree of 33⅓% two years later; but an examination of the trade statistics of Canada fails to show any increase in the percentage which Great Britain supplies of the imports of that colony. On the contrary, the percentage of the imports of Canada supplied by Great Britain is less at the present time than the average in the years immediately preceding the application of the reduced tariff rate on merchandise from that country. In the case of New Zealand and the Customs Union of South Africa, the new tariff system has not been in operation a sufficient length of time to determine, or even indicate definitely its effect upon trade with the mother country. It seems doubtful, however,

from a study of the operations of the system in Canada, whether a mere reduction of 33⅓% in the rates of duty on merchandise from the mother country is sufficient to materially change the trend of trade toward the mother country as against the nearer-by markets from which the bulk of Canada's imports are drawn, namely, those of the United States.

It seems quite apparent that the system adopted in France and the United States of an extension of the tariff of the governing country to the governed territory under whatever name has been followed by a great increase in the commercial inter-relationship between the mother country and the governed territory. Not only has there been a great increase in the share of this trade enjoyed by the governing country, but also a marked increase in the total commerce of the governed territories, due largely to the willingness of capital from the governing country to develop new industries in the governed territory to which a stable government and reliable markets are thus promised. In the case of Porto Rico the total foreign commerce has doubled in value since annexation to the United States, and in the case of the Hawaiian Islands the commercial development dates from the adoption of the reciprocity treaty which assured freedom of interchange with the United States, but shows also a marked increase since actual annexation.

Whether the system adopted by France and the United States, of extending the tariff of the governing country to the governed territory is the best that could be adopted is a question to be determined by further study and experiment. The tariffs in question were constructed with a view to conditions in manufacturing countries located in the temperate zone, and whether they are completely suited to all conditions of a non-manufacturing people located in tropical countries may be a question worthy of future consideration. Possibly further experience may suggest the advisability of constructing individual tariffs especially suited to conditions in each of these tropical communities, but continuing to provide in all cases for absolute freedom of interchange between them and the governing country.

AMERICAN POLITICAL SCIENCE ASSOCIATION SECTION ON COMPARATIVE LEGISLATION.

Report.

During the last year, largely through the efforts of Dr. George Winfield Scott, of the Law Library of Congress and the Supreme Court, there was an appropriation made by Congress to prepare a classification scheme for a detailed subject index of the general public law found in the statutes, treaties and proclamations in the United States since the foundation of the Government. This matter was put into the hands of Dr. Scott, who, with the assistance of Mr. Middleton G. Beaman and Mr. Joseph A. Beck, has prepared such a scheme, consisting of some eight hundred quarto pages. It consists of a tentative list of headings and sub-headings which form "the framework or skeleton on which will be subjoined at the appropriate points the entries or brief descriptions of the innumerable subjects of law in the 40,000 pages of Statutes and Treaties."

Dr. Scott is the chairman of the Committee on Classification. This classification scheme has now been submitted to many experts throughout the country for their criticism. Congress has continued this appropriation for another year, and it is hoped will support the work regularly so that this work can be successfully carried out. If this is done, this classification scheme will form a most useful basis for the classification of the statutes of the various states and countries, and will thus be a step taken toward indexing comparative legislation which has been so often advocated.

The credit for carrying this work on should be given to Dr. Scott, who has worked independently in this regard rather than as a member of a committee.

At the meeting in Providence it was decided to reorganize the committees of the section. Dr. Scott was reappointed as chairman of the committee on Classification, Dr. Albert Shaw

as chairman of the committee on Ways and Means, and Mr. Charles McCarthy was made chairman of the committee on Bibliography. These committees are already undertaking active work in their respective lines. It is expected that the section next year will be able to present a report of definite work done, and perhaps to provide for a part of the program at the meeting of the Association.

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